

IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

THE JAMES MADISON PROJECT,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:07cv01382 (RMU)
)	
CENTRAL INTELLIGENCE AGENCY,)	
)	
Defendant.)	
_____)	

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

I. INTRODUCTION

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

1. I am the Information Review Officer ("IRO") for the Director of Central Intelligence Area ("Director's Area") of the Central Intelligence Agency ("CIA"). The Director's Area encompasses the Office of the Director of the Central Intelligence Agency. I have held this position since 19 January 1999. I have held various administrative and professional positions within the CIA since 1989.

2. As IRO for the Director's Area, I am responsible for the final review of documents containing information originated by offices organized under the Director's Area or that otherwise implicate Director's Area interests, when such documents are the subject of FOIA or other requests for public disclosure. I also task and coordinate records searches concerning files or

documents reasonably likely to be maintained by the Director's Area. In addition and under a written delegation of authority pursuant to section 1.3(c) of Executive Order 12958, as amended,¹ I hold original classification authority at the TOP SECRET level. Therefore, I am authorized to conduct classification reviews and to make original classification and declassification decisions.

3. As part of my official duties, I ensure that determinations as to the release or withholding of information related to the Agency are proper and do not jeopardize CIA interests, personnel, or facilities, and, on behalf of the Director of Central Intelligence, do not jeopardize intelligence activities, sources or methods.

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.

5. This declaration addresses both the CIA's search for records in this case and the non-regulation documents located in response to Plaintiff The James Madison Project's FOIA request. The contemporaneously filed declaration by Joseph W. Lambert

¹ Executive Order 12958 was amended by Executive Order 13292. See Exec. Order No. 13,292, 68 Fed. Reg. 15,315 (Mar. 28, 2003). All citations to Executive Order 12958 are to the Order as amended by Executive Order 13292. See 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).

("Lambert Declaration") addresses the regulations located in response to Plaintiff's FOIA request.² To the greatest extent possible on the public record, this declaration describes:

a) the CIA's search for records responsive to Plaintiff's FOIA request; b) the records the CIA located; and c) the FOIA exemptions upon which the CIA relied to withhold certain information responsive to Plaintiff's FOIA request.

7. In total, the CIA located thirty-six records in response to Plaintiff's FOIA request. Fifteen of the thirty-six records contained the CIA's Publication Review Board ("PRB") regulation.³ Two of these fifteen documents are memoranda that have earlier, rescinded versions of the PRB regulation attached (document numbers 1512159 and 1512161). The remaining twenty-one documents located in response to Plaintiff's FOIA request are internal CIA memoranda, transcripts, or internal CIA publications. This declaration addresses the twenty-one non-regulation documents as well as the memoranda and regulations included in documents numbers 1512159 and 1512161.⁴

² The Lambert Declaration discusses the following thirteen documents: 1531047, 1531048, 1531049, 1531050, 1531051, 1531052, 1512158, 1531061, 1531062, 1531063, 1531064, 1531065, and 1531066. The CIA released the first six documents in their entirety. The CIA released the remaining seven documents in redacted, segregable form.

³ Document numbers 1512158, 1512159, 1512161, 1531047, 1531048, 1531049, 1531050, 1531051, 1531052, 1531061, 1531062, 1531063, 1531064, 1531065, and 1531066.

⁴ This declaration discusses the following twenty-three documents: 1512155, 1512156, 1512157, 1512159, 1512160, 1512161, 1512162, 1512163, 1512164, 1512165, 1512166, 1531053, 1531054, 1531055, 1531056, 1531057, 1531058, 1531059, 1531120, 1531067, 1531068, 1531069, and 1531121.

8. I carefully reviewed the foregoing twenty-three documents to determine whether these records, or any part of them, could be released to Plaintiff. I determined the CIA could release twenty of these records in redacted, segregable form. I refer to these redacted-in-part ("RIP") records as "RIP documents."⁵ I further determined the CIA should withhold three of the records responsive to Plaintiff's FOIA request in their entirety. I refer to these denied-in-full ("DIF") records as "DIF documents."⁶ I determined the release of the withheld information in the RIP and DIF documents would reveal information exempt from disclosure pursuant to FOIA exemptions (b)(1), (b)(2), (b)(3), or (b)(5).

9. For the Court's convenience, I divided this declaration into six parts: a) introduction; b) Plaintiff's FOIA request; c) the procedural history of this case; d) the CIA's records systems; e) the CIA's search for records responsive to Plaintiff's FOIA request; and f) the FOIA exemptions applicable to the information withheld from records responsive to Plaintiff's FOIA request. Attached as Exhibit A to this declaration, and incorporated by reference herein, is a Vaughn Index which: a) describes the responsive records challenged by

⁵ The RIP documents discussed in this declaration are numbered as follows: 1512159, 1512160, 1512161, 1512162, 1512163, 1512164, 1512165, 1512166, 1531053, 1531054, 1531055, 1531056, 1531057, 1531058, 1531059, 1531120, 1531067, 1531068, 1531069, and 1531121.

⁶ The DIF documents are numbered as follows: 1512155, 1512156, and 1512157.

Plaintiff; b) identifies the FOIA exemptions applicable to the responsive records challenged by Plaintiff; and c) explains why the applicable FOIA exemptions justify withholding information from the responsive records challenged by Plaintiff.

II. PLAINTIFF'S FOIA REQUEST

10. Plaintiff's FOIA request seeks "copies of all internal CIA documents constituting guidelines, regulations or policy memoranda pertaining to the operation of the Publications Review Board." See Pl.'s Compl. ¶ 5.

III. PROCEDURAL HISTORY

11. On 26 June 2007, Plaintiff submitted its FOIA request to the CIA. See Letter from Zaid to Koch of 6/26/07 at 1, attached as Exhibit B. Therein, Plaintiff asked the CIA to produce "copies of all internal Central Intelligence Agency ("CIA") documents constituting guidelines, regulations or policy memoranda pertaining to the creation and operation of the Publications Review Board." See id.

12. On 4 July 2007, the CIA acknowledged receipt of Plaintiff's FOIA Request. See Letter from Koch to Zaid of 7/4/07, attached as Exhibit C. Therein, the CIA granted Plaintiff's request for a fee waiver. See id. The CIA also stated its backlog of FOIA requests would prevent it from responding to Plaintiff's FOIA request within the twenty days prescribed by statute. See id. The CIA further stated that,

unless Plaintiff objected, the CIA would limit its search for responsive records to CIA-originated records existing as of the date of the CIA's 4 July 2007 acceptance letter. See id. It is my understanding Plaintiff never objected to the temporal restrictions placed upon its FOIA request.

13. Plaintiff filed the instant action on 30 July 2007. The CIA filed its Answer on 7 September 2007. Pursuant to this Court's order, the parties filed a Joint Status Report on 2 November 2007. Therein, the parties agreed the CIA would process and release any non-exempt documents or portions of documents responsive to Plaintiff's request by 11 January 2008.

14. Pursuant to the parties' agreement, the CIA produced nine RIP documents to Plaintiff on 11 January 2008.⁷ See Letter from Koch to Zaid of 1/11/08, attached as Exhibit D. The CIA withheld information from the RIP documents based upon FOIA exemptions (b)(1), (b)(2), (b)(3), and (b)(5). See id. The CIA also noted it withheld additional information in its entirety (the three DIF documents) based upon FOIA exemptions (b)(1), (b)(3), and (b)(5). See id.

15. On 17 January 2008, Plaintiff advised the CIA of several perceived deficiencies in the CIA's response to

⁷ The following is a list of the nine RIP documents that the CIA produced to Plaintiff on 11 January 2008: 1512158, 1512159, 1512160, 1512161, 1512162, 1512163, 1512164, 1512165, and 1512166. The following is a list of the three DIF documents withheld in their entirety pursuant to FOIA exemptions (b)(1), (b)(3), and (b)(5): 1512155, 1512156, and 1512157.

Plaintiff's FOIA request. See Letter from Zaid to Mei of 1/17/08, attached as Exhibit E. Specifically, Plaintiff:

- a) questioned whether the CIA adequately searched for PowerPoint slides that the PRB allegedly used during briefings; b) asserted the CIA should search for, and produce, several documents and Web pages referenced in document number 1512160; c) asserted the CIA should search for, and produce, the written guidance referenced in document number 1512161; d) asserted the CIA should search for, and produce, the 26 March 1999 Agency Regulation ("AR") referenced in document number 1512162; e) asserted the CIA should search for, and produce, several documents referenced in document number 1512163; f) asked the CIA to search for, and produce, additional policy/internal memorandum responsive to Plaintiff's FOIA request; and g) challenged the redactions made to document number 1512164.

See id. In subsequent correspondence, Plaintiff indicated it also challenges the redactions that the CIA made in document number 1512166. Plaintiff also asked the CIA to search for a version of document number 1512166 containing pages twenty-nine and thirty. Significantly, I understand Plaintiff does not challenge the withholdings made in the remaining RIP and DIF documents.

16. The CIA disagrees with Plaintiff's assertions and contends its original search for responsive records was both

reasonable and adequate. Similarly, the CIA submits its redactions were reasonable and made pursuant to applicable FOIA exemptions. Notwithstanding the CIA's position regarding both the adequacy of its search and production of responsive records, the CIA conducted a search for the documents specifically referenced in Plaintiff's 17 January 2008 letter. The CIA conducted this search solely in an attempt to avoid protracted litigation in this case. This search located eleven of the documents referenced in Plaintiff's 17 January 2008 letter. The CIA produced these eleven documents in redacted form to Plaintiff on 27 May 2008. See Letter from Mei to Zaid of 5/27/08, attached as Exhibit F. The CIA withheld information from these documents based upon FOIA exemptions (b)(2), (b)(3), and (b)(5).

17. Pursuant to Plaintiff's 17 January 2008 letter, the CIA also reexamined the information withheld from document number 1512166 and searched for a complete version of this document. The CIA located a version of this document containing the originally missing pages twenty-nine and thirty. With the exception of the additional pages, the CIA determined it could not release any additional information from this document. The

CIA produced a copy of this document to Plaintiff on 27 May 2008.⁸ See Exhibit F.

18. Significantly, the CIA also searched for earlier versions of the CIA's PRB regulation. The CIA limited its initial search in this case to the current version of the CIA's PRB regulation. In an effort to provide Plaintiff with as complete a response as possible, the CIA undertook this search on its own initiative. As discussed in the Lambert Declaration, this search located twelve rescinded versions of the CIA's PRB regulation. The CIA released six of these regulations in their entirety (the released-in-full documents or "RIF documents") and withheld information from six of the documents pursuant to FOIA exemptions (b)(2) and (b)(3). The CIA produced copies of these documents to Plaintiff on 27 May 2008.⁹ See Exhibit F.

IV. THE CIA'S RECORD SYSTEMS AND PROCESSING OF FOIA REQUESTS

19. The CIA continually faces the risk that there may be a spy within its ranks. Prudence dictates the CIA take appropriate counterintelligence and security precautions to minimize the potential damage to national security that could result from a spy in the CIA's midst. One way to minimize such

⁸ The following is a list of the twelve non-regulation documents that the CIA produced to Plaintiff on 27 May 2008: 1531053, 1531054, 1531055, 1531056, 1531057, 1531058, 1531059, 1531120, 1531067, 1531068, 1531069, and 1531121.

⁹ The following is a list of the twelve regulations that the CIA produced to Plaintiff on 27 May 2008: 1531061, 1531062, 1531063, 1531064, 1531065, 1531066, 1531047, 1531048, 1531049, 1531050, 1531051, and 1531052.

damage is to limit the amount of information to which any particular employee has access.

20. The CIA limits employee access to information by employing a "need-to-know" policy. This policy provides an employee access to only that information required to perform the employee's duties. The CIA implements this policy through decentralizing and compartmenting its records systems.

21. While the counterintelligence advantage of this practice is obvious, a disadvantage of this practice is equally obvious: the inherent inefficiencies created in the records search and retrieval processes. These inefficiencies impact the CIA's process for responding to FOIA requests.

22. The CIA Information and Privacy Coordinator in the IMS is the initial reception point for all FOIA requests. Under the direction and supervision of the CIA Information and Privacy Coordinator, experienced IMS information management professionals analyze each request and determine which CIA components might reasonably be expected to possess records responsive to a particular request. IMS then transmits a copy of the request to each relevant component. When a request is broad, it is quite common for IMS to transmit the request to many components. Because the CIA's records systems are decentralized and compartmented, each component must devise its own search strategy. Each component identifies which of its

record systems it will search as well as what search tools, indices, and terms it will employ during the search. The information management professionals who conduct FOIA searches for each component are the same professionals who search records in support of the component's daily mission.

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

24. After officers remove the non-responsive documents, Information Review Officers must then review the remaining documents to determine which, if any, FOIA exemptions apply, and whether they can reasonably segregate non-exempt information from exempt information. In evaluating responsive documents, officers must segregate exempt information to avoid the inadvertent disclosure of classified information, information concerning intelligence sources and methods and other information protected by FOIA exemptions. This process is laborious and time-consuming.

25. In the course of reviewing documents for exempt information and segregability, a component frequently identifies

information that it must coordinate with, or refer to, another CIA component or another agency because the other component or agency originated the information or otherwise has an equity in it.¹⁰ This coordination and referral process itself can be quite time-consuming because other components and agencies have their own mission and FOIA procedures.

26. When all of the components and agencies complete their respective reviews, IMS professionals, under my direction and supervision, incorporate all of their recommendations regarding exemption, segregation, redaction, and release. These IMS professionals then conduct a review from a corporate perspective on behalf of the entire CIA. In this review, the IMS professionals: a) resolve conflicting recommendations; b) ensure the release or withholding determinations comply with applicable law and published CIA regulations; c) identify additional exempt information that reflects overall CIA equities; d) ultimately produce the integrated final record copy of each document; and e) respond to the requestor.

27. In response to a broad FOIA request, the CIA may locate potentially responsive documents in several different components. When considered individually, a particular document may not indicate on its face that it contains exempt

¹⁰ See Exec. Order No. 12,958 § 3.6(b), 60 Fed. Reg. 19,825 (Apr. 20, 1995), reprinted as amended in 50 U.S.C. § 435 note (Supp. V 2005).

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, the CIA cannot make final release determinations with respect to any particular document until it completes a review of all responsive documents. In certain instances, the CIA Information & Privacy Coordinator may withhold additional information whenever it is necessary to apply FOIA exemptions to protect overall CIA equities.

V. THE ADEQUACY OF THE CIA'S SEARCH FOR RESPONSIVE DOCUMENTS

28. The CIA conducted a reasonable and adequate search of its relevant record systems for records responsive to Plaintiff's FOIA request. In late 2007, the CIA tasked the following seven CIA components to search their relevant record systems for "copies of all internal Central Intelligence Agency . . . documents constituting guidelines, regulations or policy memoranda pertaining to the creation and operation of the Publications Review Board": Office of General Counsel, Office of Public Affairs, CIA Director's Action Center, Office of the Inspector General ("OIG"), PRB, Historical Regulations Repository, and IMS. These searches included a search of the CIA's regulation database--known as the Regulatory Repository--for records responsive to Plaintiff's FOIA request. The CIA's

Regulatory Repository contains copies of the CIA's current regulations.

29. The CIA used the following search terms and search strings in its search for responsive records: a) Publications Review Board; b) Publications Review; c) PRB OR Publications Review Board AND Policy AND Operations AND creation AND guidelines AND regulations; d) Publication Review Board AND PRB; e) PRB; f) Publication; and (g) the CIA's internal regulation number for the PRB regulation. As noted in the CIA's 4 July 2007 acceptance letter, the CIA limited its search to records that were in existence as of 4 July 2007. See Exhibit C. These searches located twelve responsive documents. On 11 January 2008, the CIA produced nine of these documents to Plaintiff in redacted, segregable form. The CIA withheld three of these documents in their entirety (the DIF documents).

30. As noted above, on 17 January 2008, Plaintiff sent the CIA a letter specifically identifying seven perceived deficiencies in the CIA's initial response:

Item 1: Plaintiff questioned whether the CIA adequately searched for PowerPoint slides allegedly used by the PRB during briefings given to CIA employees;

Item 2: Plaintiff asserted the CIA should search for and produce the following documents and Web pages referenced in document number 1512160 (1) the "briefing or information packet on the prepublication review process," (2) the "web page . . .

that explains the prepublication review process," (3) the PRB-related segment of the "annual ethics briefing for SIS officers," and (4) the "briefing or informational packet" allegedly provided to all employees leaving the CIA;

Item 3: Plaintiff asserted the CIA should search for and produce the written guidance allegedly given to "supervisors and contracting officers" as referenced in section 4.f of document number 1512161;

Item 4: Plaintiff asserted the CIA should search for, and produce, the 26 March 1999 AR referenced on Page 3, Footnote 5, of document number 1512162;

Item 5: Plaintiff asserted the CIA should search for, and produce, the October 1991 Inspection Report, the 17 January 1992 memo from the Deputy Director for Planning and Coordination ("DDP&C"), an "appointing document" containing a statement of the PRB's members' duties and a Headquarters Handbook referenced in document number 1512163;

Item 6: Plaintiff asked the CIA to search for, and produce, additional policy/internal memorandum responsive to Plaintiff's FOIA request; and

Item 7: Plaintiff challenged the propriety of the redactions the CIA made to document number 1512164 and asked the CIA to examine the document again to determine if the CIA could release additional information from the document.

31. In an effort to avoid protracted litigation, the CIA responded to Plaintiff's 17 January 2008 letter by asking the PRB to search for the PRB-related documents identified in Plaintiff's letter. The CIA also asked the OIG to specifically

search for the "October 1991 Inspection Report" referenced in Plaintiff's letter. The CIA also revisited the information withheld from document numbers 1512164 and 1512166.

32. The PRB used the following search terms during its search for the items listed in Plaintiff's 17 January 2008 letter: a) briefing; b) EOD's; c) web page; d) ethics; e) managers; f) guidance; g) supervisors; and h) contracting officers.

33. Regarding Item 1 in Plaintiff's 17 January 2008 letter, the PRB's search located five PowerPoint briefings from the PRB. The CIA produced copies of these documents to Plaintiff on 27 May 2008 (document numbers 1531054, 1531055, 1531056, 1531057, and 1531058). See Exhibit F.

34. Regarding Item 2 in Plaintiff's 17 January 2008 letter, the CIA did not locate any responsive documents related to: a) the "briefing or information packet on the prepublication review process" allegedly added to the entry-on-duty briefing or information packet; b) a "web page . . . that explains the prepublication review process;" c) a PRB-related segment of the "annual ethics briefing for SIS officers;" or d) a "briefing or informational packet" allegedly provided to all employees leaving the CIA.

35. Regarding Item 3 in Plaintiff's letter, the CIA did not locate any responsive documents related to the "written

guidance" allegedly given to "supervisors and contracting officers" as referenced in section 4.f of document number 1512161.

36. Regarding Item 4 in Plaintiff's letter, the CIA states that Plaintiff's assumption that Footnote 5 on Page 3 of document number 1512162 references an Agency Regulation dated 26 March 1999 is incorrect. The document referenced in this footnote is an Employee Bulletin and not an agency regulation. The CIA searched for, but was unable to locate, the Employee Bulletin referenced in document number 1512162.

37. Regarding Item 5 in Plaintiff's letter, the CIA located the October 1991 Inspection Report referenced in document number 1512163 (document number 1531120). The CIA also located the 17 January 1992 memo from the DDP&C referenced in Plaintiff's letter (document number 1531121); two earlier versions of a handbook used during PRB reviews (document numbers 1531068 and 1531069); and a 2 February 1992 memorandum regarding the PRB (document number 1531067). The CIA produced copies of these documents to Plaintiff on 27 May 2008. See Exhibit F.

38. Regarding Item 6 in Plaintiff's letter, the CIA did not locate any additional policy/internal memorandum responsive to Plaintiff's FOIA request. However, as noted above, the CIA did locate: a) five PowerPoint briefings; b) the October 1991 "Inspection Report;" c) the 17 January 1992 memo from the DDP&C;

d) two early versions of the PRB handbook; and e) a 14 February 1992 memorandum from the PRB's Chairman.

39. Regarding Item 7 in Plaintiff's letter, the CIA determined it could release additional information previously withheld from document number 1512164. The CIA produced a copy of this document to Plaintiff on 27 May 2008 (document number 1531053). See Exhibit F.

40. Regarding the information withheld from document number 1512166, the CIA reexamined this document and determined it could not release any additional information from this document. However, the CIA did locate and produce a version of this document containing the originally missing pages twenty-nine and thirty (document number 1531059). See Exhibit F.

41. As noted above and in the Lambert Declaration, the CIA also searched for earlier, rescinded, versions of the CIA's PRB. The CIA produced copies of the PRB regulations located in this search to Plaintiff on 27 May 2008. See Exhibit F.

VI. APPLICABLE FOIA EXEMPTIONS

42. I have reviewed the RIP and DIF documents in this case and determined the information withheld from these documents is exempt from disclosure based upon four FOIA exemptions: (b)(1), (b)(2), (b)(3), and (b)(5). As is explained in detail below, FOIA exemption (b)(1) exempts classified information from FOIA's

disclosure requirements.¹¹ FOIA exemption (b)(2) exempts an agency's "internal personnel rules and practices" from FOIA's disclosure requirements.¹² FOIA exemption (b)(3) authorizes the CIA to withhold responsive records that could reveal CIA sources, methods, organization, and functions.¹³ On its own, FOIA exemption (b)(3) allows the CIA to withhold all of the information withheld from the RIP and DIF documents in this case. FOIA exemption (b)(5) exempts inter-agency or intra-agency memoranda or letters which would not be available by law to a private party other than an agency in litigation with the CIA.¹⁴ Significantly, the same information may fall under more than one FOIA exemption. For example, CIA employee telephone numbers are exempt under both (b)(2) and (b)(3); and information regarding classified sources and methods is exempt under both (b)(1) and (b)(3).

¹¹ The information withheld from one of the DIF documents (document number 1512157) under FOIA exemption (b)(1) is also protected from disclosure under FOIA exemptions (b)(3) and (b)(5). See discussion infra ¶¶ 74-97.

¹² The information withheld from the RIP documents under FOIA exemption (b)(2) is also protected from disclosure under FOIA exemptions (b)(3) and (b)(5). See discussion infra ¶¶ 74-97.

¹³ The information withheld from the DIF and RIP documents under FOIA exemption (b)(3) is also protected from disclosure under FOIA exemptions (b)(1), (b)(2) and (b)(5). See discussion infra ¶¶ 43-73, 85-97.

¹⁴ As discussed below, FOIA exemption (b)(5) encompasses the attorney-client privilege, the work product doctrine, and the deliberative process privilege. Significantly, the information withheld from the DIF and RIP documents under FOIA exemption (b)(5) is also protected from disclosure under FOIA exemptions (b)(1), (b)(2), and (b)(3). See discussion infra ¶¶ 43-84.

A. FOIA Exemption (b)(1)

43. FOIA exemption (b)(1) provides FOIA does not apply to matters that are: "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order."¹⁵

44. The authority to classify information is derived from a succession of Executive orders, the most recent of which is Executive Order 12958. I reviewed the records responsive to Plaintiff's FOIA request under the criteria established by Executive Order 12958, as amended, and determined the information withheld from disclosure under FOIA exemption (b)(1) is in fact properly classified.

45. Section 6.1(h) of Executive Order 12958, as amended, defines "classified national security information" or "classified information" as "information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form."¹⁶ Section 6.1(y) of Executive Order 12958, as amended, defines "national security" as the "national defense or foreign

¹⁵ 5 U.S.C. § 552(b)(1) (2000).

¹⁶ 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).

relations of the United States.”¹⁷ 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.

46. 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

¹⁷ Id.

original classification authority is able to identify or describe the damage.¹⁸

1. Original Classification Authority

47. 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.¹⁹ Section 1.3(c)(2) provides TOP SECRET original classification authority 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.²⁰

48. 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.²¹ Under the authority of section 1.3(c)(2), the Director of the CIA delegated original TOP SECRET classification authority to me.

¹⁸ Id.

¹⁹ See id.

²⁰ See id.

²¹ 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).

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.²² With respect to the information for which the CIA asserts FOIA exemption (b)(1) in this case, as indicated in the attached Vaughn Index, I reviewed document number 1512157 and determined it contains information that is currently and properly classified SECRET by an original classification authority.

2. U.S. Government Information

49. 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. With respect to the information for which the CIA asserts FOIA exemption (b)(1) in this case, as indicated in the attached Vaughn Index, I reviewed document number 1512157 and determined it is 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

50. 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 information concerning

²² 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).

"intelligence activities (including special activities), intelligence sources or methods, or cryptology." With respect to the information for which the CIA asserts FOIA exemption (b)(1) in this case, as indicated in the attached Vaughn Index, I reviewed document number 1512157 and determined it contains information concerning intelligence sources and methods.

51. *Intelligence Activities* - Intelligence activities lie at the core of the CIA's functions. Information regarding specific intelligence activities reveals the interests and capabilities of the CIA. This information could be used by foreign intelligence services and others who have interests opposed to those of the United States. These parties search constantly for information regarding the activities of the CIA and are able to gather information from myriad sources, analyze this information, and create ways to defeat CIA activities from seemingly disparate pieces of information.

52. *Intelligence Sources* - The primary mission of the CIA is the collection of foreign intelligence through clandestine human sources. To collect useful intelligence, the CIA must often depend upon information that can only be gathered from knowledgeable human sources under an arrangement of absolute, lasting secrecy. This secrecy extends both to the existence of the source's relationship with the CIA and to the kind of information or type of operational assistance the source is

supplying. Intelligence sources include individual human sources, foreign intelligence and security services, and foreign governments generally.

53. Intelligence sources can be expected to furnish information only when confident they are protected from harm, retribution, or embarrassment by the absolute secrecy surrounding their CIA relationship. The safety and welfare of the source, his or her family, and even his or her associates could be jeopardized if the CIA disclosed information that might compromise the source's identity or affiliation with the CIA. This sort of compromise can occur if the CIA reveals its internal regulations for releasing classified or sensitive information. The release of any information that would allow a foreign intelligence service to associate a CIA officer with a particular human source imperils the human source, his family, and even his associates. Similarly, the release of internal regulations and/or procedures governing the CIA's review and possible release of no longer classified or sensitive information, like the PRB regulation, also would assist foreign intelligence services obtain classified and sensitive information regarding CIA sources.

54. Any compromise of the information about a source could also hamper future cooperation with sources and damage ongoing intelligence efforts. If the U.S. Government breached the trust

and confidentiality upon which a source's relationship is formed, current and potential sources across the globe could surmise the U.S. Government is unable or unwilling to maintain confidentiality and that further cooperation with our government is ill-advised. If the compromise of a particular source becomes known, it would likely discourage other sources from cooperating with the CIA at a time when international cooperation is critical to combating terrorism. Thus, protection of information concerning intelligence sources is among the most important responsibilities charged to the Director of the CIA. Protection of information concerning intelligence sources necessarily includes information related to the internal rules, practices and procedures the CIA follows when deciding whether to release classified or sensitive information to the public.

55. *Intelligence Methods* - Intelligence methods are the means by which an intelligence agency accomplishes its objectives. Intelligence methods include the basic business practices and methodological "tools" used by the CIA to accomplish its mission. Each intelligence method 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 its effectiveness. Once the nature of an intelligence method or the

fact of its use in a certain situation is discovered, its usefulness in that situation is neutralized and the CIA's ability to apply that method in other situations is significantly degraded. In fact, detailed knowledge of each intelligence method 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. Moreover, once an intelligence method or its use is discovered, the method may eventually be used against the CIA.

56. Significantly, the term "intelligence methods" is not limited to sophisticated techniques and electronic devices. Rather, "intelligence methods" also include the special internal practices and procedures of an intelligence agency. One example of a method involves the means by which the CIA decides what information it can release to the public. The disclosure of this information would allow foreign intelligence services to manipulate and circumvent the rules, practices, and procedures the CIA uses when deciding whether it can release classified or sensitive information to the public without jeopardizing U.S. security.

4. Damage to the National Security

57. With respect to the information for which the CIA asserts FOIA exemption (b)(1) in this case, as indicated in the attached Vaughn Index, I reviewed document number 1512157 and

determined that disclosure of the SECRET information contained therein reasonably could be expected to cause serious damage to the national security.

58. Document number 1512157 is a legal memorandum from the PRB's Associate Legal Advisor to the PRB. This document contains SECRET information regarding the CIA's intelligence activities, sources, and methods. For example, this document discusses the PRB's decision to prohibit publication of details surrounding specific CIA clandestine activities. The document also identifies specific CIA classified sources and methods and discusses how the PRB might handle a request to disclose this information. The release of the withheld information contained in this document could provide foreign intelligence services with confirmation of various CIA sources and methods. Similarly, the release of the withheld information also would provide foreign intelligence services with insights into the CIA's past activities and clandestine operations. Finally, the release of the withheld information in this document could jeopardize the CIA's liaison relationships and U.S. foreign policy by revealing CIA activities in certain foreign countries.

5. Proper Purpose

59. With respect to the information for which the CIA asserts FOIA exemption (b)(1) in this case, as indicated in the attached Vaughn Index, I reviewed document number 1512157 and

determined no 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

60. With respect to the information for which the CIA asserts FOIA exemption (b)(1) in this case, as indicated in the attached Vaughn Index, I reviewed document number 1512157 and determined it is properly marked in accordance with section 1.6 of Executive Order 12958, as amended. Document number 1512157 bears on its face one of the three classification levels defined in section 1.2 of Executive Order 12958, as amended; the identity, by name or personal identifier and position, of the original classification authority; the agency and office of origin, if not otherwise evident; declassification instructions; and a concise reason for classification that, at a minimum, cites the applicable classification categories of section 1.4.

7. Proper Classification

61. With respect to the information for which the CIA asserts FOIA exemption (b)(1) in this case, as indicated in the attached Vaughn Index, I reviewed document number 1512157 and determined it has been classified in accordance with the

substantive and procedural requirements of Executive Order 12958, as amended, and that, therefore, it is currently and properly classified.²³

62. Accordingly, I determined the CIA properly withheld the SECRET information contained in document number 1512157 pursuant to FOIA exemption (b)(1).

B. FOIA Exemption (b)(2)

63. FOIA exemption (b)(2) exempts from disclosure information that is "related solely to the internal personnel rules and practices of an agency."²⁴ FOIA exemption (b)(2) encompasses two distinct categories of information: a) internal information of a less significant nature, such as administrative routing notations and agency rules and practices, sometimes referred to as "low (b)(2)" information; and b) more substantial internal information, the disclosure of which would risk circumvention of a legal requirement, sometimes referred to as "high (b)(2)" information.

1. Low (b)(2) Information

64. As noted in the attached Vaughn Index, the CIA properly invoked FOIA exemption (b)(2) to withhold low (b)(2)

²³ Document numbers 1531120 and 1531121 were erroneously classified SECRET. These documents do not contain classified information and the CIA does not assert FOIA exemption (b)(1) to withhold information in these documents.

²⁴ 5 U.S.C. § 552(b)(2) (2000).

information from eighteen of the RIP documents.²⁵ The low (b)(2) information withheld from these documents is internal information and not of any genuine public interest. The information withheld from these documents does not purport to regulate the public's activities or set standards CIA personnel must follow when deciding whether to proceed against or take action affecting members of the public. The CIA detailed the specific application of the low (b)(2) exemption to particular documents in the Vaughn Index accompanying this declaration.²⁶ However, information withheld under the low (b)(2) exemption includes:

- CIA employee identification numbers and official titles;
- CIA employee telephone and fax numbers;

²⁵ As detailed in the Vaughn Index accompanying this declaration, the CIA also withheld low (b)(2) information from the regulations produced in this case. The low (b)(2) information withheld from these regulations is internal information and not of any genuine public interest. The information withheld from these regulations does not purport to regulate the public's activities or set standards CIA personnel must follow when deciding whether to proceed against or take action affecting members of the public. The information withheld under the low (b)(2) exemption includes: a) CIA employee identification numbers and official titles; b) CIA employee telephone and fax numbers; c) the names and/or numbers for internal CIA regulations, publications, review handbooks, reports, and forms; d) internal CIA organizational information, including but not limited to, component abbreviations; e) internal procedures used by the PRB to resolve intra-PRB disagreements; f) the CIA's internal policy regarding which CIA publications are exempt from the PRB regulation; and g) the CIA's internal management and ethics review process.

²⁶ Although I have discussed the general categories of information withheld under FOIA exemptions in this case, the CIA respectfully submits the Court should review this declaration and the Lambert Declaration together and in conjunction with the attached Vaughn Index. As noted above, the Vaughn Index identifies the particular FOIA exemptions applicable to particular documents and/or information withheld from release.

- the names and/or numbers for internal CIA regulations, publications, Employee Bulletins, review handbooks, reports, and forms;
- internal CIA organizational information, including but not limited to, component abbreviations;
- internal procedures used by the PRB to resolve intra-PRB disagreements regarding the damage to national security that could result from the publication of sensitive information;
- the CIA's internal policy regarding which CIA publications are exempt from the PRB regulation;
- the CIA's internal review process used to evaluate CIA employees' resumes; and
- the CIA's internal policy regarding the OGC's ethics review of the circumstances surrounding the release of publications by CIA employees.

Significantly, the CIA released the segregable, non-exempt portions of the PRB regulations that affect the public.

65. By way of example, I refer the Court to document number 1512159. This document, an internal CIA email, contains the following low (b)(2) information: a) internal CIA regulation, publication, and/or form names and numbers; b) telephone numbers for CIA employees; c) names of CIA employees; d) internal email addresses for CIA employees; and e) telephone numbers for CIA employees. This document also contains withheld information regarding: a) the CIA's prohibition against current

employees receiving compensation for teaching, speaking or writing related to the employee's official duties; and b) which CIA component is responsible for reviewing proposed nonofficial publications submitted by current employees and contractors. The rescinded PRB regulation attached to this email also contains withheld low (b)(2) information. The rescinded regulation describes the CIA's policies and procedures for the submission and review of material proposed for publication or public dissemination by current employees, former employees, contractors, and other individuals obligated by a CIA secrecy agreement to protect from unauthorized disclosure certain information they obtain as a result of their contract with the CIA. Specifically, the rescinded regulation contains the following low (b)(2) information: a) internal CIA regulation, publication, and form names and numbers; b) a CIA employee's telephone number; c) a CIA employee's internal identification number; d) CIA organizational information, including component abbreviations; e) external and internal mailing addresses, fax numbers, telephone numbers, and email addresses for the PRB; and f) internal CIA personnel rules and practices.

66. Similarly, document number 1512160 is an internal CIA Employee Bulletin. This document contains withheld information regarding: a) the CIA's prohibition against current employees receiving compensation for teaching, speaking or writing related

to the employee's official duties; and b) which CIA component is responsible for reviewing proposed nonofficial publications submitted by current employees and contractors.

67. Document number 1512161 contains two internal CIA memoranda discussing the CIA's revised procedures for official and nonofficial publications. The CIA withheld the following low (b)(2) information from these memoranda: a) internal CIA regulation numbers; b) CIA employees' names and signatures; c) the internal name of a CIA Web site; d) internal CIA addresses; and e) internal CIA personnel rules and practices. The CIA also withheld the following low (b)(2) information from the rescinded regulation attached to these memoranda: a) internal CIA regulation, publication, and form names and numbers; b) a CIA employee's telephone number; c) CIA organizational information, including component abbreviations; d) external and internal mailing addresses, fax numbers, telephone numbers, and email addresses for the PRB; and e) internal CIA personnel rules and practices.

68. Document number 1512162 is an internal CIA memorandum summarizing the CIA Director of Information Management's review of the PRB standards used to review nonofficial publications. This document contains withheld information regarding the CIA's ability to track CIA employees' official representational activities (speeches, conference participation, interviews,

etc.). The withheld information is purely internal, pertains to CIA employees only, and has no impact on the general public.

69. Document number 1512163 is an internal CIA memorandum regarding the closure of the CIA Inspector General's October 1991 Inspection Report. The CIA withheld internal rules and practices outlining the duties of one PRB member. The withheld information in this document does not purport to regulate the public's activities or set standards CIA personnel must follow when deciding whether to proceed against or take action affecting members of the public.

70. Document numbers 1531067 and 1531121 are internal memoranda regarding the internal management and operation of the PRB. The CIA withheld the following low (b)(2) information from these documents: a) internal CIA regulation, publication, and file numbers; b) telephone numbers for CIA employees; c) internal CIA addresses; and d) internal CIA personnel rules and practices regarding, *inter alia*, internal procedures and record keeping requirements related to the review of manuscripts for classified information.

2. High (b)(2) Information

71. As noted in the attached Vaughn Index, the CIA properly invoked FOIA exemption (b)(2) to withhold high (b)(2) information contained in the four versions of the reviewers' handbooks produced to Plaintiff (document numbers 1512164,

1531053, 1531068, and 1531069). The high (b)(2) information withheld from these documents includes the CIA's internal procedures for: a) reviewing works of fiction; b) reviewing information from other agencies or foreign governments; c) handling and classifying manuscripts; d) reviewing material previously disclosed; e) reviewing publications that contain classified information available in open sources; and f) reviewing materials intended for use in official publications.

72. The disclosure of the withheld information would significantly risk circumvention of the regulations from which the information came. The information withheld from these documents would provide a blueprint that one could use to circumvent the CIA's prepublication review process. Disclosing the withheld information in these documents would allow a would-be author to "game the system" and force the disclosure of classified information that could damage the national security. Stated simply, the disclosure of the withheld information in these documents would allow an author to write around the CIA's PRB regulation.

73. Significantly, the CIA also withheld low (b)(2) information from these documents, including but not limited to, internal information regarding the PRB's functions and authorizing documents.

C. FOIA Exemption (b)(3)

74. The RIP and DIF documents contain information disclosing CIA intelligence sources, intelligence methods, organization, functions, employee names, and official titles. This information is exempt from disclosure under FOIA exemption (b)(3). FOIA exemption (b)(3) provides FOIA does not apply to matters that are:

specifically exempted from disclosure by statute (other than section 552b of this title) provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.²⁷

I reviewed the documents responsive to Plaintiff's FOIA request and determined the National Security Act of 1947 ("National Security Act"), as amended, and the Central Intelligence Agency Act of 1949 ("CIA Act"), as amended, are the withholding statutes applicable to this case.

1. National Security Act of 1947

75. Section 102A(i)(1) of the National Security Act of 1947, 50 U.S.C. § 403-1(i)(1), as amended, requires the protection of intelligence sources and methods. I reviewed the RIP and DIF documents in this case and determined disclosure of the information withheld from these documents would reveal

²⁷ 5 U.S.C. § 552(b)(3) (2000).

intelligence sources and methods. Accordingly, the CIA relies on the National Security Act to withhold any information that would reveal intelligence sources and methods.

76. As noted in Paragraphs 51-53 above, the definition of "intelligence sources" is much broader than a source's identity. The definition also includes the fact of the source's relationship with the CIA and the type of information or operational assistance the source is providing. Similarly, "intelligence methods" are not limited to sophisticated techniques and electronic devices. Rather, "intelligence methods" also include the special practices and procedures of an intelligence agency. The National Security Act exempts the information at issue in this case because disclosure of this information could reveal the CIA's intelligence sources and/or methods.

77. In contrast to Executive Order 12958, the National Security Act's statutory requirement to protect intelligence sources and methods does not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized disclosure.

2. Central Intelligence Agency Act of 1949

78. Section 6 of the CIA Act, 50 U.S.C. § 403g, as amended, provides:

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 this title that the Director of National Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, the . . . [CIA] shall be exempted from . . . the provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency.

As the CIA's primary function is to collect intelligence through human *sources* and by other appropriate *methods*, section 6 of the CIA Act authorizes the CIA to withhold "intelligence sources" and "intelligence methods" that are related to the CIA's core function. Moreover, CIA employees' names and personal identifiers (e.g., employee signatures, employee numbers or initials), titles, file numbers, and internal organizational data are specifically and absolutely protected from disclosure by the CIA Act.

79. In contrast to Executive Order 12958, the CIA Act's statutory requirement to further protect intelligence sources and methods by protecting CIA organization and functions does not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized disclosure.

80. The RIP documents and the DIF documents contain information that, if disclosed, could reveal CIA sources, methods, organization, functions, employee names, and official titles. The CIA detailed the specific application of the (b)(3) exemption to particular documents in the Vaughn Index accompanying this declaration. However, information withheld under the (b)(3) exemption includes, *inter alia*: a) internal CIA policies and regulations; b) CIA employee names; c) CIA employee identification numbers; d) CIA employee titles; e) CIA employee telephone numbers; f) CIA employee email addresses; g) CIA employee signatures; h) CIA employee fax numbers; i) internal CIA Web page URLs; j) CIA addresses; k) CIA regulation, publication, form, and Employee Bulletin names and numbers; l) the name of the CIA's intranet; and m) internal CIA organizational information.

81. By way of example, I refer the Court to document number 1512163. The CIA withheld the following from this document: a) an employee name; b) employee title; c) internal organizational information; d) internal regulation and handbook numbers; e) employee signatures; and f) internal policies and regulations.

82. Similarly, document number 1512165 is an internal CIA memorandum regarding the PRB. The CIA withheld internal organizational information from this document.

83. Likewise, the CIA withheld internal regulation numbers from document number 1512166. As noted above, the CIA did not withhold pages 29 and 30 of this document. Rather, these pages were simply missing from the document that the CIA located during its initial search for responsive records.

84. In the interests of securing the U.S. Government's foreign intelligence activities and in order to further implement the DNI's responsibility to protect intelligence sources and methods from unauthorized disclosure, the CIA relies on the CIA Act to withhold any information that would reveal the CIA's sources, methods, organization, or functions. On the basis of the CIA Act section 6 and, thus, under FOIA exemption (b)(3), this information is absolutely protected from disclosure by law. Section 6 requires no showing of harm.

D. FOIA Exemption (b)(5)

85. FOIA exemption (b)(5) provides FOIA does not apply to matters that are inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the CIA.²⁸ I reviewed the documents responsive to Plaintiff's FOIA request and determined document numbers 1512155, 1512156, 1512157, 1512163, 1531057, 1531058, 1531120, and 1531121 are intra-agency and inter-agency memoranda containing information protected from disclosure by one or more

²⁸ Id. § 552(b)(5).

of the following three privileges: a) the attorney-client privilege; b) the work product doctrine; and c) the deliberative process privilege.

86. *Attorney-Client Privilege* - The attorney-client privilege protects confidential communications between a client and his attorney relating to a matter for which the client has sought legal advice.

87. *Work-Product Doctrine* - The work-product doctrine protects information, legal analysis, and opinions prepared in anticipation of criminal, civil, and administrative proceedings or litigation.

88. *Deliberative Process Privilege* - The scope of FOIA exemption (b)(5) is quite broad and incorporates virtually all civil discovery privileges. Courts have construed FOIA exemption (b)(5) to incorporate the civil discovery concept that information or documents of pre-decisional, deliberative process are exempt from disclosure. The deliberative process privilege protects the internal deliberations of the government by exempting from release those recommendations, analyses, and discussions--both factual and legal--prepared to inform or in anticipation of decision-making. The integrity of the government's deliberative process--not just the documents themselves--is protected by this privilege.

89. This privilege is designed to protect and encourage open and candid policy discussions between subordinates and superiors. It also protects the ability of decision-makers to receive confidential advice and counsel; and allows agencies to explore alternative avenues of action and engage in internal debates without fear of public scrutiny.

90. If an agency's pre-decisional policy analysis or deliberations were subject to public release, agency pre-decisional debates would be stifled or "chilled." Indeed, participants would hesitate to voice opinions or points of view that may, at first blush, appear radical or "outside the box," or that could be subject to misinterpretation. Consequently, if the deliberative process was unprotected, participants would likely refrain from providing the unvarnished truth in their analyses to policy-makers.

91. As noted above, the CIA properly invoked FOIA exemption (b)(5) to withhold information protected by the deliberative process privilege from eight documents in this case.

92. Document number 1512155 is an internal memorandum from the Chairman of the PRB to the Director of the CIA. This document contains specific recommendations on proposed revisions to the CIA's procedure for reviewing official and nonofficial publications. These recommendations are pre-decisional and

deliberative in nature and, thus, protected by the deliberative process privilege. This document also includes email correspondence from a CIA Information Review Officer ("IRO") discussing a search for PRB records in a litigated FOIA case. As the IRO prepared this document in conjunction with pending litigation, the work product doctrine also protects this information from disclosure.

93. Document numbers 1512156 and 1512157 are legal memoranda from the PRB's Associate Legal Advisor to the PRB. These documents contain attorney-client communications protected from disclosure by the attorney-client privilege. Indeed, these documents contain specific legal advice from the PRB's Associate Legal Advisor to the PRB. These memoranda contain specific legal advice regarding the CIA's compliance with the PRB's thirty-day review requirement and the CIA's prepublication review of factual material in fictional manuscripts. Similarly, the work product doctrine protects these documents from disclosure as the attorney drafting these memoranda reasonably could anticipate litigation over the subject matters discussed in the memoranda, i.e., the CIA's compliance with the PRB's prescribed timeline and how the CIA reviews factual material in fictional manuscripts. Finally, the deliberative process privilege also protects these memoranda from disclosure. The attorney's recommendations are both pre-decisional and

deliberative in nature as the attorney is analyzing the PRB's various options and offering specific recommendations on future PRB-related actions.

94. Document number 1512163 is a memorandum to the CIA's Inspector General. The CIA withheld a pre-decisional and deliberative operational recommendation from page two of this memorandum regarding who should chair the PRB. The deliberative process privilege exempts this information from disclosure.

95. Document numbers 1531057 and 1531058 are PowerPoint presentations regarding the PRB. These documents contain recommendations, analyses, and discussions designed to inform or assist in future decision-making processes. The deliberative process privilege exempts this information from disclosure.

96. Document number 1531120 is the CIA Inspector General's October 1991 Inspection Report on the PRB. This report documents the CIA Inspector General's inspection of the PRB. The CIA withheld pre-decisional and deliberative information that the PRB did not ultimately adopt. This report contains factual and legal recommendations, analyses, and discussions designed to inform and assist in future decision-making. For example, the CIA withheld the following exempt information from this document: a) operational recommendations regarding the internal mission, organization, administration, management, and operation of the PRB's review and appeal processes; b) comments

and observations from the various CIA components and employees interviewed by the Inspector General's inspection team; c) the inspection team's analysis and reply to the comments and observations made by the various CIA components and employees interviewed during the Inspector General's investigation; d) legal analysis of disclosure statutes relevant to the PRB; e) the Inspector General's analysis of the PRB's workload and technology support; and f) background on the Inspector General's inspection methodology.

97. Document number 1531121 is a memorandum from the DDP&C to the CIA Inspector General. This document contains the Public Affairs Office's response to four operational recommendations made in a preceding PRB inspection report. The withheld information in this document includes: a) the Public Affairs Office's pre-decisional and deliberative analysis regarding the adoption of operational recommendation number 2; and b) a description of the Public Affairs Office's proposed revisions to the PRB regulation and handbook. The deliberative process privilege exempts the withheld information in this document from disclosure.

E. Segregability

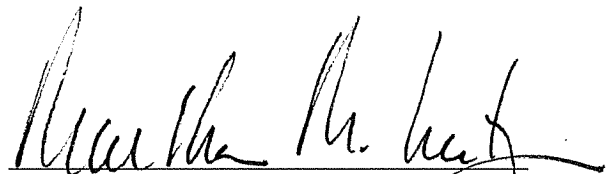
98. The CIA conducted a line-by-line review of all the RIP documents at issue in this case, individually and as whole, to identify and release meaningful, reasonably segregable, non-

exempt portions of documents. The CIA released any information that was segregable and not otherwise exempt.

99. Regarding the DIF documents, the CIA determined no meaningful, reasonably segregable, portion of those documents could be released. The CIA made this determination of segregability based upon a careful review of the DIF documents in this case, both individually, and as a whole. The CIA conducted a line-by-line review of the DIF documents, individually and as whole, to identify and release meaningful, reasonably segregable, non-exempt portions of documents. The CIA determined that any non-exempt information is so inextricably intertwined with the exempt information that there are no meaningful, reasonably segregable, non-exempt portions. Therefore, the CIA determined there are no meaningful segments of information in the DIF documents that reasonably can be segregated for release.

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

Executed this 30th day of May, 2008.

A handwritten signature in black ink, appearing to read 'Martha M. Lutz', is written over a horizontal line.

Martha M. Lutz
Information Review Officer
Director of the Central Intelligence
Area
Central Intelligence Agency