

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

GRANT F. SMITH, <i>PRO SE</i>	)	
	)	
Plaintiff,	)	
v.	)	Civil No. 1:15-cv-00224 (TSC)
	)	
CENTRAL INTELLIGENCE AGENCY,	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT’S STATEMENT OF FACTS AS TO  
WHICH THERE IS NO GENUINE DISPUTE**

Pursuant to LCvR 7(h), Defendant sets forth below the material facts pertinent to its motion for summary judgment as to which there is no genuine dispute.

**I. THE CIA’S SEARCHES REGARDING PLAINTIFF’S FOIA REQUEST**

1. All FOIA requests to the CIA are received by the IMS group within the CIA’s Directorate of Digital Innovation, Agency Data Office. Wilson Decl. ¶ 6.
2. There experienced IMS professionals analyze the request and transmit copies of the request to the CIA Directorate(s) they determine might reasonably be expected to possess responsive records. *Id.*
3. The Information Review Officer (“IRO”) for that Directorate in turn conducts a search or, where appropriate, requests the components within that Directorate that might reasonably to be expected to possess responsive records to conduct a search of their non-exempt repositories. *Id.*
4. The CIA’s records systems are decentralized and compartmentalized due to the unique security and counterintelligence risks. *Id.*
5. Each component therefore devises its own search strategy for identifying which records systems to search as well as what search tools, indices and terms to employ. *Id.*

6. The FOIA request at issue (F-2010-01210) sought “declassification and release of all cross referenced CIA files related to uranium diversion from the [NUMEC] to Israel.” *Id.* ¶¶ 17–18.

7. Given the nature of Plaintiff’s request, IMS determined that the DI, DIR, and NCS were the only Directorates reasonably likely to have responsive records. *Id.* ¶ 23.

8. These Directorates conducted a search of their non-exempt records repositories using a variation of terms including “NUMEC,” “Nuclear Materials and Equipment Corporation,” and “Uranium Diversion.” *Id.* ¶¶ 24–27.

9. These searches located twenty-one responsive records. *Id.* Four of these documents had previously been released in part to the public and were produced to Plaintiff, and seventeen of these documents were withheld in full. *Id.*

10. Following the March 18, 2014, ruling by the Interagency Security Classification Appeals Panel (“ISCAP”) overturning a number of CIA classification determinations in documents related to the alleged NUMEC diversion, the CIA decided to conduct a review of classification determinations made for records responsive to Plaintiff’s request, as well as a supplemental search of DS&T databases for records responsive to Plaintiff’s request. *Id.* ¶ 28.

11. The DS&T did not locate any additional responsive documents. *Id.* ¶ 29.

12. However, all but one of the seventeen responsive records were now able to be released in segregable form. *Id.*

13. The CIA determined that exempted operational files likely to contain records responsive to Plaintiff’s request currently perform the functions set forth in 50 U.S.C. § 3141(b), which defines the operational files exempted by statute, and declined to search these exempted operational files for responsive records. *Id.* ¶¶ 30–35.

14. The CIA determined that Plaintiff's requested information did not fall within the scope of an exception that would warrant a search of exempted operational files. *Id.* ¶¶ 37, 44.

## II. THE CIA'S WITHHOLDING OF EXEMPT INFORMATION UNDER FOIA EXEMPTIONS

15. The CIA withheld sixteen records in part and one record in full, pursuant to FOIA Exemptions 1, 3, 6, 7(C), and 7(E). *See* Wilson Decl. ¶ 29 & Exh. F (hereinafter "CIA Vaughn"); Hardy Decl. ¶ 6; Hackett Decl. ¶ 6; Stein Decl. ¶ 8 & Att. 1 (hereinafter "DOE Vaughn").

16. **Exemption 1.** The CIA has withheld portions of responsive records under Exemption 1 as a result of the assertions of the CIA, FBI, and State Department of this exemption. *See* Wilson Decl. ¶¶ 29, 45–67; CIA Vaughn, Entries 1-4, 6-17; Hardy Decl. ¶ 4; Hackett Decl. ¶ 6.

17. *The CIA's Classified Information.* The CIA invoked Exemption 1 to protect information currently and properly classified pursuant to Sections 1.4, 3.3(b)(1), and 3.3(b)(6) of E.O. 13526. Wilson Decl. ¶¶ 29, 45–67.

18. CIA's declaration establishes that it properly withheld one responsive record in full and fifteen records in part that are classified Top Secret or Secret pursuant to E.O. 13526 Section 1.4(c)-(d) as protecting specific intelligence sources, methods, and activities and foreign relations or activities. *See id.* ¶¶ 49–67; CIA Vaughn, Entries 1-4, 6-17.

19. CIA's declarant, Mary E. Wilson, is an original classification authority pursuant to E.O. 13526 and is authorized to conduct classification reviews and to make original classification and declassification decisions. *See* Wilson Decl. ¶ 3.

20. CIA's declarant has reviewed the withheld information and determined that the information satisfies the substantive requirements of Section 1.1(a) of E.O. 13526. *See id.* ¶¶ 45–49.

21. CIA's declarant has also determined that the information is currently and properly classified pursuant to E.O. 13526. *See id.* ¶¶ 45, 49–67. CIA's declarant has identified the serious harms that could result from release of the information—it would reveal information regarding the CIA's (i) collection of foreign intelligence information including collection from human intelligence and foreign government sources; (ii) intelligence methods and practices including cover, foreign intelligence relationships, and classified methods used to disseminate intelligence-related information and protect it from unauthorized disclosure; (iii) implementation of specific intelligence methods in an operational context; and (iv) confidential discussions between the United States government and various foreign governments, as well as confidential information about the foreign relations of the United States. *See id.* ¶¶ 49–67. These types of information are exempt from automatic declassification of information in documents more than 25 years old pursuant to E.O. 13526, §§ 3.3(b)(1), 3.3(b)(6), and the information continues to warrant classification as it has not lost its sensitivity with the passage of time. *See id.* ¶¶ 49–67.

22. *The FBI's Classified Information.* The FBI invoked Exemption 1 to protect information currently and properly classified pursuant to Sections 1.4, 3.3(b)(1), and 3.3(b)(6) of E.O. 13526. Hardy Decl. ¶¶ 16–19.

23. FBI's declaration establishes that it properly withheld certain information that are classified Secret pursuant to E.O. 13526 Section 1.4(c)-(d) as protecting specific intelligence sources, methods, and activities and foreign relations or activities. *See id.* ¶¶ 8, 15–19.

24. FBI's declarant, David M. Hardy, is an original classification authority pursuant to E.O. 13526 and is authorized to conduct classification reviews and to make original classification and declassification decisions. *See id.* ¶ 2.

25. FBI's declarant has reviewed the withheld information and determined that the

information satisfies the substantive requirements of Section 1.1(a) of E.O. 13526. *See id.* ¶¶ 12–15.

26. FBI’s declarant has also determined that the information is currently and properly classified pursuant to E.O. 13526. *See id.* ¶¶ 13–19. FBI’s declarant has identified the serious harms that could result from release of the information—it would reveal information regarding (i) the FBI’s actual intelligence sources and methods (including the capabilities of such sources and methods) used against specific targets of foreign counterintelligence investigations or operations or the targets of such investigations, or (ii) activities by the United States or foreign governments that, if known, could seriously and demonstrably impair relations between the United States and a foreign government or politically undermine the diplomatic activities of the United States. *See id.* ¶¶ 16–19. These types of information are exempt from automatic declassification of information in documents more than 25 years old pursuant to E.O. 13526, §§ 3.3(b)(1), 3.3(b)(6), and the information continues to warrant classification as it has not lost its sensitivity with the passage of time. *See id.* ¶¶ 16–19.

27. *The State Department’s Classified Information.* The State Department invoked Exemption 1 to protect information currently and properly classified pursuant to Sections 1.4 and 3.3(b)(6) of E.O. 13526. Hackett Decl. ¶¶ 10–13.

28. State Department’s declaration establishes that it properly withheld certain information that are classified Top Secret or Secret pursuant to E.O. 13526 Section 1.4(b), (d) as protecting foreign government information and foreign relations or activities. *See id.* ¶¶ 10–13.

29. State Department’s declarant, John F. Hackett, is an original classification authority pursuant to E.O. 13526 and is authorized to conduct classification reviews and to make original classification and declassification decisions. *See id.* ¶ 1.

30. State Department's declarant has reviewed the withheld information and determined that the information satisfies the substantive requirements of Section 1.1(a) of E.O. 13526. *See id.* ¶¶ 8–10.

31. State Department's declarant has also determined that the information is currently and properly classified pursuant to E.O. 13526. *See id.* ¶¶ 8–13. State Department's declarant has identified the serious harms that could result from release of the information—it would reveal information regarding the United States government's diplomatic exchanges, including (ii) sensitive aspects of U.S. foreign relations, the release of which could damage the United States' bilateral relationships with countries whose cooperation is important to national security, and (ii) confidential foreign government information. *See id.* ¶¶ 11–13. This type of information is exempt from automatic declassification of information in documents more than 25 years old pursuant to E.O. 13526, § 3.3(b)(6), and the information continues to warrant classification as it has not lost its sensitivity with the passage of time. *See id.* ¶¶ 11–13.

32. **Exemption 3.** The CIA has withheld portions of responsive records under Exemption 3 as a result of the assertions of the CIA, FBI, and DOE of this exemption. *See Wilson Decl.* ¶¶ 29, 71; CIA Vaughn, Entries 1-17; Hardy Decl. ¶ 23; Stein Decl. ¶ 8; DOE Vaughn.

33. The CIA withheld one record in full and portions of fifteen documents under the National Security Act. *See CIA Vaughn*, Entries 1-4, 6-17. The information withheld is protected from public disclosure by the National Security Act because it would reveal intelligence sources and methods used by the CIA. *Wilson Decl.* ¶¶ 69, 71. This information is also withheld as classified information under Exemption 1. *Id.*

34. The FBI also invoked Exemption 3 to protect information that would reveal intelligence sources and methods, which are protected from disclosure by the National Security Act, 50

U.S.C. § 3024(i)(1). *See* Hardy Decl. ¶¶ 21–23. Specifically, the FBI relies on the National Security Act to withhold the information regarding intelligence sources and methods that is also withheld under Exemption 7(E). *Id.* ¶ 21.

35. The CIA withheld one record in full and portions of sixteen documents under the CIA Act. *See* Wilson Decl. ¶¶ 70–71; CIA Vaughn, Entries 1-17. The information withheld is protected from public disclosure by the CIA Act in order to protect the names of CIA officers and internal offices. *Id.*

36. DOE has withheld certain information in nine documents that is currently and properly deemed RD pursuant to the Atomic Energy Act in accordance with DOE classification guidance issued by the DOE Office of Classification. Stein Decl. ¶ 8; DOE Vaughn. DOE determined that withheld information would pose undue risk to the common defense and security by specifying the mass of fissile material necessary to build a nuclear weapon. *Id.*

37. **Exemptions 6 and 7(C).** The CIA has withheld portions of responsive records under Exemption 6 and Exemption 7(C) as a result of the FBI’s assertion of these exemptions. *See* Wilson Decl. ¶ 29; Hardy Decl. ¶ 4.

38. The FBI has asserted Exemptions 6 and 7(C) in conjunction with one another due to the overlapping nature of the exemptions’ standards for nondisclosure. Hardy Decl. ¶ 28 n.5.

39. The FBI invoked Exemption 6 and Exemption 7(C) to withhold names and identifying information of FBI Special Agents who were responsible for conducting, supervising, and/or maintaining the investigative activities reflected in the documents responsive to Plaintiff’s FOIA request. *Id.* ¶ 30.

40. As explained by the FBI’s declarant, “[p]ublicity (adverse or otherwise) regarding any particular investigation to which [a Special Agent] ha[s] been assigned may seriously prejudice

their effectiveness in conducting other investigations . . . [and] could trigger hostility toward a particular agent.” *Id.*

41. The FBI could identify no discernible public interest in the disclosure of this personal information because the disclosure of an agent’s name and identifying information would not significantly increase the public’s understanding of the FBI’s operations and activities. *Id.*

42. As a result, the FBI concluded that the disclosure of this information would constitute a clearly unwarranted invasion of privacy and, therefore, withheld this information pursuant to Exemptions 6 and 7(C). *Id.*

43. **Exemption 7(E).** The CIA has withheld portions of responsive records under Exemption 7(E) as a result of the FBI’s assertion of this exemption. *See* Wilson Decl. ¶ 29; Hardy Decl. ¶ 4.

44. The FBI invoked Exemption 7(E) to protect the application of certain sensitive investigation techniques within the law enforcement investigation(s) at issue. Hardy Decl. ¶ 32.

45. The withheld information concerns a sensitive law enforcement technique used by FBI agents to conduct criminal investigations, and disclosure of this information could enable subjects of FBI investigations to circumvent similar currently used techniques and procedures by law enforcement. *Id.* ¶ 33. The specific application of the particular law enforcement technique at issue in the investigation(s) at issue is not commonly known. *Id.*

46. **Segregability.** The IROs review the responsive documents to determine whether any FOIA exemptions apply and whether they can reasonably segregate nonexempt information from exempt information. *See* Wilson Decl. ¶ 15.

47. This includes segregating exempt information to avoid any disclosure of classified information, information concerning CIA intelligence sources and methods, or other information protected by the FOIA exemptions. *Id.*

48. When all of the components and IROs complete their respective reviews, IMS professionals incorporate all of the recommendations, resolve conflicting recommendations, and ensure that the release or withholding meets the legal standards. *Id.* ¶ 16.

49. A final review is conducted in light of the entire set of responsive documents on behalf of the entire CIA to ensure that overall CIA equities are protected. *Id.*

50. Following the March 18, 2014, ruling by the ISCAP overturning a number of CIA classification determinations in documents related to the alleged NUMEC diversion, the CIA decided to conduct a review of classification determinations made for documents responsive to Plaintiff's request. *Id.* ¶ 28.

51. The CIA determined that all but one of the seventeen responsive records were now able to be released in segregable form. *Id.* ¶ 29.

52. With few exceptions, the applicable withholdings in the records released in part consist of limited areas within paragraphs or redacted areas self-contained on a page. *See* Pl. Notice Exh. 19.

53. The one document that was withheld in full could not be disclosed on the basis of FOIA Exemptions 1 and 3. Wilson Decl. ¶ 29; CIA Vaughn, Entry 17.

### **III. EXHIBITS**

54. The following exhibits are attached hereto:

- |           |   |
|-----------|---|
| Exhibit 1 | Declaration of Mary E. Wilson (including subexhibits A-F) |
| Exhibit 2 | Declaration of David M. Hardy                             |
| Exhibit 3 | Declaration of John F. Hackett (including subexhibit 1)   |
| Exhibit 4 | Declaration of Kenneth M. Stein (including subexhibit 1)  |

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

CHANNING D. PHILLIPS  
United States Attorney

ELIZABETH J. SHAPIRO  
Deputy Branch Director

/s/ Elizabeth L. Kade

ELIZABETH L. KADE

(D.C. Bar No. 1009679)

Trial Counsel

U.S. Department of Justice

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Counsel for Defendant

# **EXHIBIT 3**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Grant Smith,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:15-cv-00224-TSC
	)	
Central Intelligence Agency,	)	
	)	
Defendant.	)	
_____	)	

**DECLARATION OF JOHN F. HACKETT**

Pursuant to 28 U.S.C. § 1746, I, John F. Hackett, declare and state as follows:

1. I am the Director of the Office of Information Programs and Services (“IPS”) of the United States Department of State (the “Department”). In this capacity, I am the Department official immediately responsible for responding to requests for records under the Freedom of Information Act (the “FOIA”), 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, and other applicable records access provisions. I have been employed by the Department in this capacity since June 2015. Prior to assuming this role, I served as the Acting Director of IPS since April 2014 and the Deputy Director since April 2013. As the IPS Director, I have original classification authority and am authorized to classify and declassify national security information. I make the following statements based upon my personal knowledge, which in turn is based on a personal review of the records in the case file established for processing the request at issue in this litigation (the “subject request”) and upon information furnished to me in the course of my official duties. I am familiar with the efforts of Department personnel to respond to

the CIA's consultation request relating to the subject request, and I am in charge of coordinating the agency's review efforts with respect to the documents that are the subject of this consultation.

2. The core responsibilities of IPS include: (1) responding to records access requests made by the public (including under the FOIA, the Privacy Act, and the mandatory declassification review requirements of the Executive Order governing classified national security information), by members of Congress, by other government agencies, and those made pursuant to judicial process such as subpoenas, court orders and discovery requests; (2) records management; (3) privacy protection; (4) national security classification management and declassification review; (5) corporate records archives management; (6) research; (7) operation and management of the Department's library; and (8) technology applications that support these activities.

3. This declaration explains the Department's processing of the material referred by the Central Intelligence Agency ("CIA") in response to Plaintiff's FOIA request to the CIA, and the FOIA exemptions applied in processing the responsive records.

#### **I. ADMINISTRATIVE PROCESSING OF PLAINTIFF'S REQUEST**

4. By letter dated May 13, 2010, Grant Smith ("Plaintiff") submitted a FOIA request to the Central Intelligence Agency ("CIA"). The request sought "declassification and release of all cross referenced CIA files related to uranium diversion from the Nuclear Materials and Equipment Corporation (NUMEC) to Israel."

5. In a letter dated August 12, 2015, the CIA coordinated the review of 16 documents with the Department that it determined were responsive to Plaintiff's FOIA request and that contained State Department equities.

6. By memorandum dated August 18, 2015 (Exhibit 1) the Department requested that, where the CIA exempted material under FOIA Exemption (b)(1), the CIA also cite to Executive Order 13526, section 3.3.(b)(6) to protect Department equities that are contained in the classified information withheld in this case.

## **II. EXEMPTION CLAIMED**

### **FOIA Exemption (b)(1) – Classified Information**

7. 5 U.S.C. § 552(b)(1) states that the 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 . . . .

8. Based upon my personal review of the documents and information furnished to me in the course of my official duties, I have determined that the information withheld under Exemption 1, 5 U.S.C. § 552(b)(1), continues to meet the classification criteria of Executive Order (“E.O.”) 13526 and that the Department has not previously authorized or officially acknowledged public release of this information. This information includes information classified at the TOP SECRET and SECRET levels. Section 1.2 of E.O. 13526 states:

“Top Secret” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.

“Secret” shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.

9. Section 6.1(l) of E.O. 13526 defines “damage to the national security” as follows:

“Damage to the national security” means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, taking into consideration such aspects of the information as the sensitivity, value, utility, and provenance of that information.

10. Information withheld in this case under Exemption 1 is properly classified pursuant to Section 3.3(b)(6) of E.O. 13526, which states that:

An agency head may exempt from automatic declassification specific information, the release of which should clearly and demonstrably be expected to –

(b)(6) reveal information, including foreign government information, that would cause serious harm to relations between the United States and a foreign government, or to ongoing diplomatic activities of the United States

11. Diplomatic exchanges are premised upon, and depend upon, an expectation of confidentiality. Mutual trust between governments in this realm is vital to U.S. foreign relations. The inability of the United States to maintain confidentiality in its diplomatic exchanges would inevitably chill relations with other governments, and could reasonably be expected to damage U.S. national security by diminishing our access to vital sources of information.

12. Some of the withheld information is classified under Section 3.3(b)(6) of E.O. 13526. This information concerns sensitive aspects of U.S. foreign relations and its release has the potential to inject friction into, or cause damage to, a number of our bilateral relationships with countries whose cooperation is important to U.S. national security, including some in which public opinion might not currently favor close cooperation with the United States. Failure to preserve the expected confidentiality could jeopardize future access not only to the sources of the withheld information, but also to others who might provide sensitive information to U.S. officials

that is important to U.S. national security interests. For these reasons, the Department withheld certain information in this case that is currently and properly classified pursuant to Section 3.3(b)(6) of E.O. 13526; and is therefore exempt from release under Exemption 1, 5 U.S.C. § 552(b)(1).

13. In addition, the ability to obtain information from foreign governments is essential to the formulation and successful implementation of U.S. foreign policy. Release of foreign government information provided in confidence, either voluntarily by the Department or by order of a court, would cause foreign officials to believe that U.S. officials are not able or willing to observe the confidentiality expected in such interchanges. Governments could reasonably be expected to be less willing in the future to furnish information important to the conduct of U.S. foreign relations, and in general less disposed to cooperate with the United States in the achievement of foreign policy objectives of common interest. In view of the important relationship between the United States and the foreign governments identified in the responsive documents, protecting foreign government information, and in some cases even the fact that information was provided, is important to our relationships and the conduct of foreign relations. For all of these reasons, certain information withheld in this case is currently and properly classified pursuant to Section 3.3(b)(6) of E.O. 13526 and is, therefore, exempt from disclosure under FOIA Exemption (b)(1).

#### **IV. CONCLUSION**

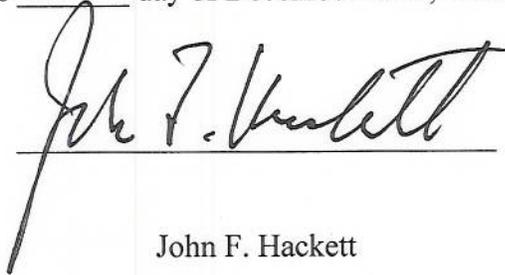
14. In summary, the CIA referred 16 documents to the Department in response to Plaintiff's FOIA request. The Department has carefully reviewed the documents and determined that certain information is exempt from disclosure under FOIA Exemption 1 pursuant to section

3.3(b)(6) of E.O. 13526. The Department has also determined that there is no additional meaningful, non-exempt information contained in the responsive portions of these records that can be disclosed.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 11<sup>th</sup> day of December 2015, Washington, D.C.



A handwritten signature in cursive script, reading "John F. Hackett", is written over a horizontal line. The signature is written in black ink and is positioned centrally below the date line.

John F. Hackett

# **Attachment 1**



United States Department of State

Washington, D.C. 20520

AUG 18 2015

Case No. F-2015-13020

Segment: CIA-0001

Requester: Grant F. Smith

UNCLASSIFIED

TO: Ms. Michele Meeks  
Coordinator, Information and Privacy  
Central Intelligence Agency  
Washington, DC 20505

FROM: John F. Hackett, Director *swf*  
Office of Information Programs and Services

SUBJECT: Reply to Request for Consultation - LITIGATION

REF: Your memorandum dated August 12, 2015  
(Your case no. F-2010-01210)

We have reviewed the material attached to your memorandum. We concur with the redactions, as applied by CIA and DOE, on the documents. We have no additional redactions with respect to Department of State equities. Where the CIA has redacted information under FOIA Exemption 1, 5 U.S. C. § (b)(1), please also cite to section 3.3(b)(6) of E.O.13526, to protect the Department's equities. In the event withholdings made at our request are appealed, we ask that you consult with us before releasing any material.

In reviewing this material, we noticed significant FBI and DOJ equities that should be cleared with them, if you have not already done so.

As we are not requesting any additional redactions, copies of documents are not being returned to you. If you have any questions, please contact the reviewer, Dwight Mason, at 202-663-3856, or the case analyst, Julia Navarro, at 202-261-8689.

UNCLASSIFIED

# **EXHIBIT 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Grant F. Smith,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 15-cv-00224
	)	
Central Intelligence Agency	)	
	)	
Defendant.	)	

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**DECLARATION OF DAVID M. HARDY**

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), in Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the Federal Bureau of Investigation (“FBI”), from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the United States Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 219 employees who staff a total of ten (10) units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA as amended by the OPEN

Government ACT of 2007 and the OPEN FOIA Act of 2009; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General and FBI policies and procedures; judicial decisions; and other Presidential and Congressional directives. My responsibilities also include the review of FBI information for classification purposes as mandated by Executive Order 13526,<sup>1</sup> and the preparation of declarations in support of Exemption 1 claims asserted under the FOIA. I have been designated by the Attorney General of the United States as an original classification authority and a declassification authority pursuant to Executive Order 13526, §§ 1.3 and 3.1. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information pursuant to the provisions of the FOIA, 5 U.S.C. § 552 and the Privacy Act (“PA”) of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the processing of records referred by the Central Intelligence Agency (“CIA”) to the FBI in the instant case.

(4) The FBI submits this declaration in support of CIA’s motion for summary judgment. In accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), this declaration provides an explanation of the FBI’s assertion of FOIA Exemptions to protect information from the referred CIA’s records. Specifically, the referred CIA’s records relates to the FBI’s investigation relating to Uranium Diversion from the Nuclear Materials and Equipment Corporation (“NUMEC”). Accordingly, this declaration provides justifications for the FBI’s

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<sup>1</sup> 75 Fed. Reg. 707 (2010).

withholding of information pursuant to FOIA Exemptions 1, 3, 6, 7(C), and 7(E). *See* 5 U.S.C. § 552, (b)(1), (b)(3), (b)(6), (b)(7)(C), and (b)(7)(E).

**PROCEDURAL HISTORY OF REFERRAL FROM CIA**

(5) Plaintiff submitted a FOIA request to the CIA seeking, “declassification and release of all cross reference CIA files related to uranium diversion from the Nuclear Materials and Equipment Corporation (NUMEC) to Israel.” While processing plaintiff’s request, CIA located documents containing FBI’s equities. On or about July 10, 2015, the CIA referred these documents to the FBI for consultation and disclosure determination.

(6) On or about August 13, 2015, the FBI returned the consultation back to the CIA. The FBI instructed CIA to assert FOIA exemptions (b)(1), (b)(3), (b)(6), (b)(7)(C), and (b)(7)(E) to withhold portions of the referred information to protect classified information, the personal privacy of third parties, and sensitive law enforcement techniques.

**JUSTIFICATION FOR NON-DISCLOSURE UNDER THE FOIA**

(7) All documents referred to the FBI by the CIA and responsive to plaintiff’s request were processed to achieve maximum disclosure consistent with the access provisions of the FOIA. Every effort was made to provide plaintiff with all material in the public domain and with all reasonably segregable, non-exempt information in the responsive records. No reasonably segregable, nonexempt portions have been withheld from plaintiff. Further description of the information withheld, beyond what is provided in this declaration, and could identify the actual exempt information the FBI has protected. The exemptions asserted by the FBI as grounds for non-disclosure of portions of documents are FOIA Exemptions (b)(1), (b)(6), (b)(7)(C), and (b)(7)(E).

(8) The FBI's redactions in the records at issue are clearly identified. In each instance where the FBI instructed CIA to protect its equities, the redaction is identified as "Per FBI." Each redaction contains coded categories of exemptions detailing the nature of the information withheld pursuant to the provisions of the FOIA. The coded categories are provided to aid the Court's and Plaintiff's review of the FBI's explanation of the FOIA exemptions it has asserted to withhold material. The coded pages together with this declaration demonstrate all material withheld by the FBI is exempt from disclosure pursuant to the cited FOIA exemptions, or is so intertwined with protected material that segregation is not possible without revealing the underlying protected material.

(9) Each instance of information withheld is accompanied by a coded designation that corresponds to the categories listed below. For example, if (b)(7)(C)-1 appears on a document, the "(b)(7)(C)" designation refers to FOIA Exemption (7)(C) protecting against unwarranted invasions of personal privacy. The numerical designation of "1" following the "(b)(7)(C)" narrows the main category into a more specific subcategory, such as "Names and/or Identifying Information of FBI Special Agents/Support Personnel."

(10) Listed below are the categories used to explain the FOIA exemptions asserted to withhold the protected material:

<b><u>SUMMARY OF JUSTIFICATION CATEGORIES</u></b>	
<b>CODED CATEGORIES</b>	<b>INFORMATION WITHHELD</b>
<b>Exemption (b)(1)</b>	<b>CLASSIFIED INFORMATION</b>
(b)(1)-1	Intelligence Activities, Sources and Methods (E.O. 13526 §3.3(1) and (6))
<b>Exemption (b)(3)</b>	<b>INFORMATION PROTECTED BY STATUTE</b>
(b)(3)-1	National Security Act of 1947 [50 USC Section 3024(i)(1)]

	[cited in conjunction with (b)(7)(E)-1]
<b>Exemption (b)(6) and Exemption (b)(7)(C)</b>	<b>CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY AND UNWARRANTED INVASION OF PERSONAL PRIVACY</b>
(b)(6)-1 and (b)(7)(C)-1	Names and/or Identifying Information of FBI Special Agents
<b>Exemption (b)(7)(E)</b>	<b>LAW ENFORCEMENT INVESTIGATIVE TECHNIQUES AND PROCEDURES</b>
(b)(7)(E)-1	Sensitive Investigative Technique

**EXEMPTION (b)(1)**  
**CLASSIFIED INFORMATION**

(11) The FBI's analysis of the withholding of classified information contained in these documents is based on the standards articulated in the FOIA statute, 5 U.S.C. § 552(b)(1).

Exemption (b)(1) protects from disclosure those records that are:

- (a) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and
- (b) are in fact properly classified pursuant to such Executive Order.

(12) Before I consider an Exemption (b)(1) claim for withholding agency records, I determine whether the information in those records is information that satisfies the requirements of Executive Order ("E.O. ")13526, the E.O. which governs the classification and protection of information that affects the national security,<sup>2</sup> and whether the information complies with the various substantive and procedural criteria of the E.O. E.O. 13526, signed by President Barack Obama on December 29, 2009, is the E.O. that currently applies to the protection of national security information. I am bound by the requirements of E.O. 13526, when making classification determinations.

(13) In order for information to be properly classified, and thus properly withheld from

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<sup>2</sup> Section 6.1 (cc) of E.O. 13526, defines "National Security" as "the national defense or foreign relations of the United States."

disclosure pursuant to Exemption (b)(1), the information must meet the requirements set forth in E.O. 13526 § 1.1 (a):

- (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 § 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.

(14) In addition to these substantive requirements, certain procedural and administrative requirements of E.O. 13526 must be followed before information can be considered properly classified, such as, proper identification and marking of documents. I made certain that all procedural requirements of E.O. 13526, were followed in order to ensure that the information was properly classified. Specifically, I made certain that:

- (1) each document was marked as required and stamped with the proper classification designation;
- (2) each document was marked to indicate clearly which portions are classified, which portions are exempt from declassification as set forth in E.O. 13526 § 1.5(b);
- (3) the prohibitions and limitations on classification specified in E.O. 13526 § 1.7 were adhered to;
- (4) the declassification policies set forth in E.O. 13526 §§ 3.1 and 3.3 were followed; and
- (5) any reasonably segregable portions of these classified documents that did not meet the standards for classification under E.O. 13526 were declassified and

marked for release, unless withholding was otherwise warranted under applicable law.

**DEFENDANT'S BURDEN OF ESTABLISHING**  
**EXEMPTION (b)(1) CLAIMS**

(15) With the above requirements in mind, I personally and independently examined the FBI information withheld pursuant to Exemption (b)(1). As a result of this examination, I determined that all procedural requirements of E.O. 13526 were followed; the information was properly classified at the "Secret" level, and continues to warrant classification at the "Secret" level pursuant to E.O. 13526, § 3.3; therefore, the FBI is asserting FOIA Exemption (b)(1) to withhold this information.

(16) E.O. 13526, § 3.3 provides exceptions from automatic declassification of information in documents that are more than 25 years old. One such exceptions is for information of which the release of could reasonably be expected to "(1) reveal the identity of a confidential human source, a human intelligence source, a relationship with an intelligence or security service of a foreign government or international organization, or a nonhuman intelligence source; or impair the effectiveness of an intelligence method currently in use, available for use, or under development." An intelligence source or method includes any intelligence action or technique utilized by the FBI against a targeted individual or organization that has been determined to be of a national security interest. An intelligence method is used to indicate any procedure (human or non-human) utilized to obtain information concerning such individual or organization. An intelligence activity or method has two characteristics. First, the intelligence activity or method – and information generated by it – is needed by U.S. intelligence/counterintelligence agencies to carry out their missions. Second, confidentiality must be maintained with respect to the activity or method if the viability, productivity and

usefulness of its information is to be preserved.

(17) The classification redactions were made to protect from disclosure information that would reveal the actual intelligence sources and methods used by the FBI against specific targets of foreign counterintelligence investigations or operations; identify a target of a foreign counterintelligence investigation; or disclose the intelligence gathering capabilities of the activities or methods directed at specific targets. The FBI protected information specific to intelligence source and methods, because disclosure could reasonably be expected to cause serious damage to the national security. I considered a number of factors in reaching this conclusion, including most importantly, the damage to the national security that would result by publicly releasing this information. As a result, I have determined that this information was properly classified at the “Secret” level; is exempt from automatic declassification, and continues to warrant classification at the “Secret” level, pursuant to E.O. 13526 § 3.3 (b)(1) and is therefore, exempt from disclosure pursuant to FOIA Exemption (b)(1).

(18) Executive Order 13526, § 3.3 (b) also provides that information older than 25 years is also exempt from automatic declassification when the release of the information could be expected to “(6) reveal information, including foreign government information, that would cause serious harm to relations between the United States and a foreign government, or to ongoing diplomatic activities of the United States.” E.O. 13526, § 6.1(s) defines foreign government information as: “(1) information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence; (2) information produced by the United States Government pursuant to or as a result of a joint arrangement with a foreign government or governments, or an

international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or (3) information received and treated as 'foreign government information' under the terms of a predecessor order."

(19) The FBI properly classified certain information that if released, could reveal activities by the United States or foreign governments and agencies that if known, could seriously and demonstrably impair relations between the United States and a foreign government or politically undermine the diplomatic activities of the United States. I considered a number of factors in reaching this conclusion, including most importantly, the damage to the national security at the time that would result by publicly identifying the information, the source of the information, or the relationship as utilized in the investigation, and the FBI's ability to continue to utilize such information, sources of foreign government information, and continue positive relationships with the sources of the foreign government information in the future. Such a release would have seriously and demonstrably impaired relations between the United States and the foreign governments involved, or seriously and demonstrably undermined the ongoing diplomatic activities of the United States. The protected information is sensitive information gathered by the United States either about or from a foreign country. Such information does not lose its sensitivity with the passage of time. The delicate liaison established between the United States and these foreign governments could be severely damaged should the United States disclose these investigations. As a result, this information must be handled with care so as not to jeopardize the fragile relationships that exist among the United States and certain foreign governments. The unauthorized disclosure of information gathered either from or about a foreign country identify the target, scope or time frame of intelligence activities of the United States in or about a foreign country, which may result in the curtailment or cessation of these

activities; enable hostile entities to assess United States intelligence-gathering activities in or about a foreign country and devise countermeasures against these activities; or compromise cooperative foreign sources which may curtail the flow of information from these sources. As a result, I have determined that this information was properly classified at the “Secret” level, is not subject to automatic declassification, and continues to warrant classification at the “Secret” level pursuant to E.O. 13526, § 3.3 (b)(6), and therefore, was exempt from disclosure pursuant to FOIA Exemption (b)(1).

**EXEMPTION (b)(3)**  
**INFORMATION PROTECTED BY STATUTE**

(20) 5 U.S.C. § 552(b)(3) exempts from disclosure information which is:

specifically exempted from disclosure by statute... provided that such statute (A) (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

**(b)(3)-1 National Security Act of 1947 [50 U.S.C. § 3024(i)(1)]**

(21) Exemption (b)(3) was asserted, along with Exemption (b)(7)(E), to withhold information pursuant to Section 102A(i)(1) of the National Security Act of 1947 (“NSA”), as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTPA”), 50 U.S.C. §3024(i)(1), which provides that the Director of National Intelligence (“DNI”) “shall protect from unauthorized disclosure intelligence sources and methods.”<sup>3</sup> As relevant to U.S.C. § 552(b)(3)(B), the National Security Act of 1947 was enacted before the date of enactment of

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<sup>3</sup> Section 1024(i)(1) of the National Security Act was previously codified at 50 U.S.C. § 403(i)(1). As a result of the reorganization of Title 50 of the U.S. Code, Section 102A(i)(1) is now codified at 50 U.S.C. § 3024(i)(1).

the OPEN FOIA Act of 2009.<sup>4</sup> On its face, this federal statute leaves no discretion to agencies about withholding from the public information about intelligence sources and methods. Thus, the protection afforded to intelligence sources and methods by 50 U.S.C. § 3024(i)(1) is absolute. *See CIA v. Sims*, 471 U.S. 159 (1985).

(22) In order to fulfill its obligation of protecting intelligence sources and methods, the DNI is authorized to establish and implement guidelines for the Intelligence Community (“IC”) for the classification of information under applicable laws, Executive Orders, or other Presidential Directives, and for access to and dissemination of intelligence. 50 U.S.C. § 3024(i)(1). The FBI is one of 17 member agencies comprising the IC, and as such must protect intelligence sources and methods.

(23) As described above, Congress enacted the NSA, as amended by the IRTPA, to protect the IC’s sources and methods of gathering intelligence. Disclosure of such information presents the potential for individuals to develop and implement countermeasures, which would result in the loss of significant intelligence information, relied upon by national policymakers and the IC. Given that Congress specifically prohibited the disclosure of information pertaining to intelligence sources and methods used by the IC as a whole, I have determined that the FBI’s intelligence sources and methods would be revealed if any of the withheld information is disclosed to plaintiff, and thus, the FBI is prohibited from disclosing the information under 50 U.S.C. § 3024(i)(1). Thus, this information was properly withheld pursuant to Exemption 3, as prescribed on 50 U.S.C. § 3024(i)(1). This harm justification applies to all (b)(3)-1 material withheld under 50 U.S.C. § 3024(i)(1).

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<sup>4</sup> The OPEN FOIA Act of 2009 was enacted October 28, 2009, Pub.L. 111-83, 123 Stat. 2142, 2184; 5 U.S.C. §552(b)(3)(B).

### **EXEMPTION 7 THRESHOLD**

(24) Before an agency can invoke any of the harms enumerated in Exemption (b)(7), it must first demonstrate that the records or information at issue were compiled for law enforcement purposes. Pursuant to 28 U.S.C. §§ 553, 534 and Executive Order 12333 as implemented by the Attorney General's Guidelines for Domestic Operations ("AGG-DOM") and 28 CFR § 0.85, the FBI is the primary investigative agency of the federal government with authority and responsibility to investigate all violations of federal law not exclusively assigned to another agency, to conduct investigations and activities to protect the United States and its people from terrorism and threats to national security, and further the foreign intelligence objectives of the United States. Under this investigative authority, the responsive records herein were compiled for the following law enforcement purposes.

(25) The FBI compiled the records pertaining to NUMEC pursuant to its assistance to law enforcement function. As prescribed by AGG-DOM, paragraph III.C., the FBI may provide investigative assistance to federal, state, local, and tribal enforcement agencies "in the investigation of matters that may involve federal crimes or threats to the national security, or for such other purposes as may be legally authorized." As relevant here, the FBI assisted local law enforcement in its investigation of NUMEC to Israel by providing investigative support to the CIA.

(26) Thus, these records were compiled for a law enforcement purpose; they squarely fall within the law enforcement duties of the FBI; therefore, the information readily meets the threshold requirement of Exemption (b)(7).

### **EXEMPTIONS 6 AND 7(C) -INVASIONS OF PERSONAL PRIVACY**

(27) Exemption 6 exempts from disclosure "personnel and medical files and similar

files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). All information that applies to a particular person falls within the scope of Exemption 6.

(28) Exemption 7(C) similarly exempts from disclosure “records or information compiled for law enforcement purposes [when disclosure] could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C).<sup>5</sup>

(29) When withholding information pursuant to these two exemptions, the FBI is required to balance the privacy interests of the individuals mentioned in these records against any public interest in disclosure. In asserting these exemptions, each piece of information was scrutinized to determine the nature and strength of the privacy interest of every individual whose name and/or identifying information appears in the documents at issue. When withholding the information, the individual's privacy interest was balanced against the public's interest in disclosure. For purposes of these exemptions, a public interest exists only when information about an individual would shed light on the FBI's performance of its mission to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. In each instance where information was withheld pursuant to Exemptions 6 and 7(C), the FBI determined that the individuals' privacy interests outweighed any public interest in disclosure.

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<sup>5</sup> The practice of the FBI is to assert Exemption 6 in conjunction with Exemption 7(C). Although the balancing test for Exemption 6 uses a “would constitute a clearly unwarranted invasion of personal privacy” standard and the test for Exemption 7(C) uses the lower standard of “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” the analysis and balancing required by both exemptions is sufficiently similar to warrant a consolidated discussion. The privacy interests are balanced against the public's interest in disclosure under both exemptions.

**(b)(6)-1 and (b)(7)(C)-1      Names and/or Identifying Information of FBI Special Agents and Support Personnel**

(30) In Category (b)(6)-1 and (b)(7)(C)-1, the FBI protected the names and identifying information of FBI Special Agents (“SAs”) who were responsible for conducting, supervising, and/or maintaining the investigative activities reflected in the documents responsive to plaintiff’s FOIA request. These responsibilities included conducting interviews and compiling information, as well as reporting on the status of the investigation. Assignments of SAs to any particular investigation are not by choice. Publicity (adverse or otherwise) regarding any particular investigation to which they have been assigned may seriously prejudice their effectiveness in conducting other investigations. The privacy consideration is also to protect FBI SAs, as individuals, from unnecessary, unofficial questioning as to the conduct of this or other investigations, whether or not they are currently employed by the FBI. FBI SAs conduct official inquiries into various criminal and national security violation cases. They come into contact with all strata of society, conducting searches and making arrests, both of which result in reasonable but nonetheless serious disturbances to people and their lives. It is possible for an individual targeted by such law enforcement actions to carry a grudge which may last for years. These individuals may seek revenge on the agents and other federal employees involved in a particular investigation. The publicity associated with the release of an agent’s identity in connection with a particular investigation could trigger hostility toward a particular agent. Thus, SAs maintain substantial privacy interests in information about them in criminal investigative files. In contrast, there is no public interest to be served by disclosing the identities of the SAs to the public because their identities would not, themselves, significantly increase the public’s understanding of the FBI’s operations and activities. Accordingly, after balancing these

employees' substantial privacy interests against the non-existent public interest, the FBI properly protected the names and identifying information of SAs pursuant to Exemptions 6 and 7(C).

**EXEMPTION (b)(7)(E) – INVESTIGATIVE TECHNIQUES AND PROCEDURES**

(31) Exemption (b)(7)(E) protects records or information compiled for law enforcement purposes when release “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). This exemption affords categorical protection to techniques and procedures used in law enforcement investigations; it protects techniques and procedures that are not well-known to the public as well as non-public details about the use of well-known techniques and procedures.

(32) Within the responsive documents, Exemption (b)(7)(E) has been applied to protect investigative techniques and procedures utilized by the FBI to pursue its law enforcement and intelligence gathering missions. Specifically, the FBI asserted Exemption (b)(7)(E) to protect the application of certain sensitive investigation techniques within the investigation(s) at issue.

**(b)(7)(E)-1 Sensitive Investigative Technique**

(33) The FBI has asserted Exemption (b)(7)(E)-1 to protect a sensitive technique used by FBI agents to conduct criminal investigations. Disclosure of this information could enable subjects of FBI investigations to circumvent similar currently used techniques and procedures by law enforcement. The relative benefit of these techniques and procedures could be diminished if the actual techniques and procedures were revealed in this matter. This in turn could facilitate the accumulation of information by other investigative subjects regarding the circumstances

under which these techniques and procedures were used or requested and the value of the information obtained. While the general existence and use of this law enforcement technique is publicly known, the specific internal application in the investigation at issue is not commonly known. Release of this type of information could enable criminals to educate themselves about the law enforcement investigative techniques and procedures employed for the location and apprehension of individuals and therefore, allow these individuals to take countermeasures to circumvent the effectiveness of these techniques and procedures and to continue to violate the law. Thus, the FBI properly protected this information from disclosure pursuant to FOIA Exemption (b)(7)(E)-1.

### CONCLUSION

(34) The FBI responded to CIA's consultation of records pertaining to NUMEC. The FBI has further determined that specific responsive information is exempt from disclosure pursuant to FOIA Exemptions 1, 3, 6, 7(C), and 7(E). The FBI carefully examined the responsive documents and determined that the information withheld from plaintiff, if disclosed, could reasonably be expected to reveal information that would cause serious damage to national security, would violate federal statutes governing release of information on national security operations, would cause a clearly unwarranted invasion of personal privacy and could reasonably be expected to constitute an unwarranted invasion of personal privacy, and would disclose techniques and procedures for law enforcement investigations or prosecutions, the disclosure of which, could reasonably be expected to risk circumvention of the law. The FBI has determined that there is no further reasonably segregable information to be released.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14<sup>th</sup> day of December, 2015.

A handwritten signature in black ink, appearing to read "D Hardy", written over a horizontal line.

DAVID M. HARDY  
Section Chief  
Record/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Winchester, Virginia

# **EXHIBIT 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GRANT F. SMITH, <i>PRO SE</i>	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 1:15-cv-00224 (TSC)
	)	
	)	
CENTRAL INTELLIGENCE AGENCY,	)	
	)	
Defendant.	)	

DECLARATION OF KENNETH M. STEIN

Kenneth M. Stein declares and states as follows:

1. I, Kenneth M. Stein, am the Director of the United States Department of Energy's ("Department" or "DOE") Office of Document Reviews in the DOE Office of Classification, a position in which I have served since 2009. My business office is located in Germantown, Maryland. Prior to working in my current position, I was also employed by the DOE Office of Classification, and its predecessor organizations, in various positions as a General Engineer since 1995. Before coming to DOE, I was a naval officer from 1973 to 1995. I was awarded a Bachelor of Science degree in Aerospace Engineering, and a Bachelor of Science degree in Science, from the Pennsylvania State University in 1973, and a Master of Science degree in Engineering Science from the Naval Postgraduate School in 1986.

2. The DOE Office of Classification is responsible for developing and interpreting policies and guidance to ensure the accurate identification of information and documents that must be classified under federal statute or relevant Executive Order. Pursuant to 10 C.F.R., Part 1045,

Nuclear Classification and Declassification, 10 C.F.R. § 1045.4(a)(1), the Director of the DOE Office of Classification shall “[m]anage the Government-wide system for the classification and declassification of RD [Restricted Data] and FRD [Formerly Restricted Data] in accordance with the Atomic Energy Act of 1954,” as amended, 42 U.S.C. §§ 2011, *et seq.* (“Atomic Energy Act” or “AEA”).

3. 10 C.F.R. § 1045.3, provides that:

“Restricted Data (RD) means a kind of classified information that consists of all data concerning the following, but not including data declassified or removed from the RD category pursuant to Section 142 of the Atomic Energy Act:

- (1) Design, manufacture, or utilization of atomic weapons;
- (2) Production of special nuclear material; or
- (3) Use of special nuclear material in the production of energy.”

Section 11aa. of the Atomic Energy Act, 42 U.S.C. § 2014aa., provides that:

“The term ‘special nuclear material’ means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the [DOE], pursuant to the provisions of section 51 [of the Atomic Energy Act] determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.”

4. RD may not be revealed to individuals who have not obtained the appropriate security clearances and do not have a need for access. See 42 U.S.C. § 2274-77; 10 C.F.R., Part 710, Subpart A, General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material, 10 C.F.R. §§ 710.1, *et seq.*

5. My duties include managing and supervising classification and declassification document reviews of documents potentially containing RD or FRD, National Security Information as established in Executive Order 13526, or controlled unclassified information requiring DOE

protection. These classification, declassification, and controlled information reviews of documents include all documents, DOE's and other Federal government agencies', requested under the Freedom of Information Act that potentially contain DOE classified information. DOE classified and controlled information must be removed from documents prior to their release into the public domain.

6. To the extent permitted by law, the DOE, pursuant to 10 C.F.R. 1004.1, will make available records it is authorized to withhold under the Freedom of Information Act (FOIA) whenever such disclosure is in the public interest. With respect to the information withheld from disclosure pursuant to FOIA Exemption b(3), the DOE has no discretion under the FOIA or DOE regulations to release information currently and properly classified pursuant to the Atomic Energy Act, as amended.

7. Pursuant to 10 C.F.R. 1004.6(d), the Director, Office of Classification, Office of Environment, Health, Safety, and Security, is the official responsible for the denial of the DOE classified information. The Director, Office of Classification has delegated to me authority to release document review actions where information is denied because the information is currently and properly deemed DOE classified information in accordance with DOE classification guidance issued by the DOE Office of Classification.

8. In preparing this Declaration, I have personally reviewed the nine (9) documents provided by the Central Intelligence Agency that my staff has determined to contain RD (DOE document numbers: D00036182, D00036187, D00036188, D00036190, D00036192, D00036194, D00036195, D00036196, and D00036232). I personally confirmed the information identified by my staff is currently and properly deemed RD in accordance with DOE classification guidance issued by the DOE Office of Classification, with the exception of one

document. In document D00036195 (CIA Number C06419945) page 15, I determined the previously bracketed information on that page to contain no DOE classified information; however, it may contain another agency's classified information. All other information identified by my staff as RD was correct. Attached is the associated Vaughn Index. The identified information is properly exempt from disclosure under the FOIA pursuant to Exemption b(3), as this information is classified information in the RD category pursuant to the Atomic Energy Act, as amended. DOE has no discretion to release this information.

9. The above statements are based on my personal knowledge and the information acquired by me in the course of performing my official duties. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



KENNETH M. STEIN  
Director, Office of Document Reviews  
Office of Classification  
United States Department of Energy

Executed this 22nd day of December, 2015

# **Attachment 1**

Document: MEMORANDUM FOR THE RECORD; SUBJECT: the NUMEC case - Discussion with Staff Members of the House Energy Committee and Mr. Carl Duckett, Retired CIA Employee, dated 08/03/1977. The document (13 pages with attachments) was originated at the Secret level, upgraded to the category of Restricted Data (at the Confidential level) during the course of the DOE review, and is identified in DOE Package 20150008824 as document D00036182.

Note that on the electronic (sanitized) copy released to plaintiff, the individual pages are not numbered, and it is a single document merged from many. This index lists DOE exemptions (when any) by the electronic released version (ERV) screen numbers.

Document By bracket and screen	Description of Document	Exemptions Cited	Content of Withheld Portion and/or Reason for Withholding
D00036182, Page 3; CIA C06419940, Page 3  ERV screen 61  DOE Bracket 1	Memorandum    Exempted one sentence	b(3)	<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p> <p>This portion of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying the number of weapons which could be fabricated from the unaccounted for material; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.</p>

Document By page, bracket and screen	Description of Document	Exemptions Cited	Content of Withheld Portion and/or Reason for Withholding
D00036182, Page 9; CIA C06419940, Page 9  ERV screen 67  DOE Bracket 1	Memorandum          Exempted three sentences	b(3)	<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p> <p>These portions of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying the number of weapons which could be fabricated from the unaccounted for material; therefore the mass of fissile material necessary to build a nuclear weapon is defined; and additionally estimates the obtainable weapon explosive yields.</p>

Document: Paper, NUMEC, not dated. The document (9 pages) was originated at the Secret level, upgraded to Restricted Data (at the Confidential level) during the course of the DOE review, and is identified in DOE Package 20150008824 as document D00036187.

Note that on the electronic (sanitized) copy released to plaintiff, the individual pages are not numbered, and it is a single document merged from many. This index lists DOE document page numbers and the electronic released version (ERV) screen numbers.

Document By page, bracket and screen	Description of Document	Exemptions Cited	Content of Withheld Portion and/or Reason for Withholding
D00036187. Page 1; CIA C06419941, Page 1  ERV screen 72  DOE Bracket 1	Paper          Exempted one sentences	b(3)	<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p> <p>This portion of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying the number of weapons which could be fabricated from the unaccounted for material; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.</p>

Document: MEMORANDUM FOR THE RECORD; SUBJECT: Meeting with the NRC, dated 02/03/1978; with attachments, including NRC Talking Paper dated 2/2/1978. The document (14 pages) was originated at the Secret level, upgraded to Restricted Data (at the Confidential level) during the course of the DOE review, and is identified in DOE Package 20150008824 as document D00036188.

Note that on the electronic (sanitized) copy released to plaintiff, the individual pages are not numbered, and it is a single document merged from many. This index lists DOE document page numbers and the electronic released version (ERV) screen numbers.

Document By page, bracket and screen	Description of Document	Exemptions Cited	Content of Withheld Portion and/or Reason for Withholding
D00036188. Page 2 of Attachment; CIA C06419939, Page 11  ERV screen 55  DOE Bracket 1	Memorandum       Exempted one sentence	b(3)	<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p> <p>This portion of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying the number of weapons which could be fabricated from the unaccounted for material; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.</p>

Document: NOTE FOR: DDCI; SUBJECT: NUMEC, dated 6/6/1977, W/Attached Memo Dated 05/11/1977 & Attachment. The document (8 pages) was originated at the Secret level, upgraded to Restricted Data (at the Confidential level) during the course of the DOE review, and is identified in DOE Package 20150008824 as document D00036190.

Note that on the electronic (sanitized) copy released to plaintiff, the individual pages are not numbered, and it is a single document merged from many. This index lists DOE document page numbers and the electronic released version (ERV) screen numbers.

Document By page, bracket and screen	Description of Document	Exemptions Cited	Content of Withheld Portion and/or Reason for Withholding
D00036190. Page 3 of Attachment; CIA CO6420107 Page 6  ERV screen 128  Bracket 1	Memorandum          Exempted one sentence	b(3)	<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p> <p>This portion of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying the number of weapons which could be fabricated from the unaccounted for material; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.</p>

Document: Batch No. 2 identified ... and sent to Executive Director of JCAE (George Murphy). (Attachment 9), dated 04/05/1976. The document (7 pages) was originated at the Secret level, upgraded to Restricted Data (at the Secret level) during the course of the DOE review, and is identified in DOE Package 20150008824 as document D00036192.

Note that on the electronic (sanitized) copy released to plaintiff, the individual pages are not numbered, and it is a single document merged from many. This index lists DOE document page numbers and the electronic released version (ERV) screen numbers.

Document By page, bracket and screen	Description of Document	Exemptions Cited	Content of Withheld Portion and/or Reason for Withholding
D00036192. Page 2 CIA CO6419942 Page 2  Bracket 1 ERV screen 82	Paper          Exempted two sentences	b(3)	<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p> <p>These portions of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying a number of weapons which could be fabricated from the unaccounted for material and their weight at varying levels of uranium enrichment; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.</p>

Document: Second collection of documents sent JCAE Executive Director George Murphy. This collection sent 5 April 1976, not dated. The document (7 pages) was originated at the Secret level, upgraded to Restricted Data (at the Secret level) during the course of the DOE review, and is identified in DOE Package 20150008824 as document D00036194.

Note that on the electronic (sanitized) copy released to plaintiff, the individual pages are not numbered, and it is a single document merged from many. This index lists DOE document page numbers and the electronic released version (ERV) screen numbers.

Document By page, bracket and screen	Description of Document	Exemptions Cited	Content of Withheld Portion and/or Reason for Withholding
D00036194. Page 2 CIA CO6419946 Page 2  Bracket 1 ERV screen 117	Paper     Exempted two sentences	b(3)	<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p> <p>These portions of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying a number of weapons which could be fabricated from the unaccounted for material and their weight at varying levels of uranium enrichment; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.</p>

Document MEMORANDUM FOR: Deputy Director for Central Intelligence, SUBJECT: The NUMEC Case and ERDA's Paper, dated 04/14/1977; w/attached memo Review of ERDA documents on NUMEC dated 4/12/1977; and MEMORANDUM FOR THE PRESIDENT, dated 09/08/1969. The document (20 pages) was originated at the Secret level, upgraded to Restricted Data (at the Confidential level) during the course of the DOE review, and is identified in DOE Package 20150008824 as document D00036195.

Note that on the electronic (sanitized) copy released to plaintiff, the individual pages are not numbered, and it is a single document merged from many. This index lists DOE paper document page numbers and the electronic released version (ERV) screen numbers.

Document By page, bracket and screen	Description of Document	Exemptions Cited	Content of Withheld Portion and/or Reason for Withholding
D00036195. Page 2 CIA CO6419945 Page 2  Bracket 1 ERV screen 97	Memorandum          Exempted one sentence	b(3)	<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p> <p>This portion of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying a number of weapons which could be fabricated from the unaccounted for material; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.</p>

Document By page, bracket and screen	Description of Document	Exemptions Cited	Content of Withheld Portion and/or Reason for Withholding
D00036195. Page 8 CIA CO6419945 Page 8  Bracket 1 ERV screen 103	Memorandum      Exempted one sentence	b(3)	<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p> <p>This portion of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying a number of weapons which could be fabricated from the unaccounted for material; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.</p>
D00036195. Page 9 CIA CO6419945 Page 9  Bracket 1 ERV screen 104	Memorandum      Exempted one sentence	b(3)	<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common</p>

			<p>defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p> <p>This portion of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying a number of weapons which could be fabricated from the unaccounted for material; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.</p>
<p>D00036195. Page 13 of Memo CIA CO6419945 Page 13</p> <p>Bracket 1 ERV screen 108</p>	<p>Memorandum</p> <p>Exempted one sentence</p>	b(3)	<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p> <p>This portion of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying a number of weapons which could be fabricated from the unaccounted for material and by what point in time; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.</p>
<p>D00036195. Page 14 of Memo CIA CO6419945 Page 14</p>	<p>Memorandum</p>		<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the</p>

Bracket 1 ERV screen 109	Exempted one sentence	b(3)	<p>common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p> <p>This portion of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying a number of weapons which could be fabricated from the unaccounted for material; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.</p>
D00036195. Page 15 of Memo CIA CO6419945 Page 15  ERV screen 110	Memorandum		<p>An additional declassification review was conducted by the Director of the DOE Office of Document Reviews and the Statutory Reviews Team Leader in preparation of this Vaughn Index. That review has resulted in a determination that the DOE has no objection to the release of the initially exempted sentence, as it does not fall under the category of Restricted Data, nor does it fall under a classification equity of the DOE. This does not allow unilateral release of the sentence by the DOE, as it appears to properly fall within the classification equities of other involved agencies. (of a single sentence identified for exemption at the DOE original classification review)</p>
D00036195. Page 16 of Enclosure CIA CO6419945 Page 16  Bracket 1 ERV screen 111	Memorandum      Exempted two sentences	b(3)	<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p>

			<p>These portions of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying a number of weapons which could be fabricated from the unaccounted for material; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.</p>
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Document: TALKING PAPER, not dated. The document (5 pages) was originated at the Secret level, upgraded to Restricted Data (at the Confidential level) during the course of the DOE review, and is identified in DOE Package 20150008824 as document D00036196.

Note that on the electronic (sanitized) copy released to plaintiff, the individual pages are not numbered, and it is a single document merged from many. This index lists DOE paper document page numbers and the electronic released version (ERV) screen numbers.

Document By page, bracket and screen	Description of Document	Exemptions Cited	Content of Withheld Portion and/or Reason for Withholding
D00036196. Page 3 CIA CO6419943 Page 3  Bracket 1 ERV screen 90	Memorandum          Exempted one sentence	b(3)	<p>5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.</p> <p>This portion of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying a number of weapons which could be fabricated from the unaccounted for material; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.</p>

Document MEMORANDUM FOR THE RECORD, NUMEC (W/attached control and cover sheet for Top Secret Document), not dated. The document (3 pages) was originated at the Top Secret level, upgraded to Restricted Data (at the Confidential level) during the course of the DOE review, and is identified in DOE Package 20150008824 as document D00036232.

Note that on the electronic (sanitized) copy released to plaintiff, the individual pages are not numbered, and it is a single document merged from many. This index lists DOE paper document page numbers and the electronic released version (ERV) screen numbers.

Document By page, bracket and screen	Description of Document	Exemptions Cited	Content of Withheld Portion and/or Reason for Withholding
D00036232. Page 1 CIA CO6419944 Page 1	Memorandum		5 USC 552, section (b)(3) exempts from public disclosure information: 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; The Atomic Energy Act, as amended, section 141 requires the Commission [now the DOE] to control the dissemination and declassification of Restricted Data in such a manner as to assure the common defense and security. The information removed from the document falls under the definition of Restricted Data and cannot be removed from the Restricted Data category under the provisions of Section 142a without undue risk to the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons. DOE may not publically disseminate Restricted Data.
Bracket 1 ERV screen 93	Exempted one sentence	b(3)	
Bracket 2 ERV screen 93	Exempted one sentence	b(3)	
			These portions of the information removed from the document under the authority of exemption b(3), if disclosed, would pose undue risk to the common defense and security by specifying a number of weapons which could be fabricated from the unaccounted for material; and therefore the mass of fissile material necessary to build a nuclear weapon is defined.

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
GRANT F. SMITH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case 1:15-cv-0022 (TSC)
CENTRAL INTELLIGENCE AGENCY,	)	
	)	
Defendant.	)	
_____	)	

DECLARATION OF MARY E. WILSON  
ACTING INFORMATION REVIEW OFFICER  
LITIGATION INFORMATION REVIEW OFFICE  
CENTRAL INTELLIGENCE AGENCY

I, MARY E. WILSON, hereby declare and state:

**I. INTRODUCTION**

1. I currently serve as the Acting Information Review Officer ("IRO") for the Litigation Information Review Office ("LIRO")<sup>1</sup> at the Central Intelligence Agency ("CIA" or "Agency"). Although I only recently assumed the title of Acting IRO,<sup>2</sup> I have served as the Deputy IRO for LIRO since January 2013.

2. Prior to assuming this position, I served as the Deputy Chief of the Historical Review Branch within the CIA Historical Collections Division ("HCD") for ten months. Immediately before that, I was an officer in HCD for one year. In both of those

<sup>1</sup> The name of my office previously changed in February 2015, but my underlying responsibilities and authorities, and those of my office, remain the same.

<sup>2</sup> I assumed the title of Acting IRO for LIRO as of 30 November 2015, when the IRO for LIRO, Martha Lutz, retired from the Agency.

positions, I worked on preparing discrete historical collections of information for public release. Before serving in HCD, I was an Associate IRO in the Directorate of Support for nearly three years, serving as the Deputy Directorate of Support IRO for approximately one of those years. In that role, I was responsible for making classification and release determinations for information originating within the CIA's Directorate of Support. I have worked in the information review and release field for more than fifteen years and have held other administrative and professional positions within the CIA since 1986.

3. As the Acting IRO for the LIRO, I am a senior CIA official and hold original classification authority at the TOP SECRET level under written delegation of authority pursuant to section 1.3(c) of Executive Order 13526, 75 Fed. Reg. 707 (Jan. 5, 2010). This means that I am authorized to assess the current, proper classification of CIA information, up to and including TOP SECRET information, based on the classification criteria of Executive Order 13526 and applicable regulations. Among other things, I am responsible for the classification review of CIA documents and information that may be the subject of court proceedings or public requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a.

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

5. The purpose of this Declaration is to explain and justify, to the greatest extent possible on the public record, the CIA's actions in responding to Plaintiff's FOIA request. For the Court's convenience, I have divided the remainder of this declaration into five parts. Part II provides a general overview of how the CIA processes FOIA requests and conducts searches for responsive records. Part III focuses on Plaintiff's FOIA request and the CIA's response. Part IV discusses the searches conducted by the CIA for records responsive to Plaintiff's FOIA request, and explains why the CIA did not search its operational files. Lastly, Part V explains the application of FOIA exemptions to Plaintiff's request.<sup>3</sup>

## **II. CIA'S RECORDS SYSTEMS AND FOIA PROCESSES**

6. Before discussing Plaintiff's specific FOIA request, I will first broadly discuss the process by which the Agency

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<sup>3</sup> Attached to this declaration as Exhibit F is a *Vaughn* index, which further explains on a document-by-document basis why certain information must be withheld from production on the basis of FOIA exemptions (b) (1) and/or (b) (3). I incorporate the *Vaughn* index into this declaration by reference.

processes FOIA requests. FOIA requests submitted to the CIA come to the Information Management Services ("IMS") group within the Directorate of Digital Innovation, Agency Data Office. Upon receipt of a FOIA request, IMS assigns the request a reference number so that the Agency can easily identify each request it receives. Each FOIA request is assigned a reference number with "F" as a prefix. Following the prefix is the applicable fiscal year the request is received, followed by the case number. So, a FOIA request would be referenced as: F-FYFY-####. Once IMS receives the FOIA request, under the direction of the CIA Information and Privacy Coordinator, experienced IMS professionals analyze the request and determine which CIA Directorates reasonably might be expected to possess responsive records. IMS then transmits a copy of the request to the Information Review Officer ("IRO") within each of those Directorates. When a request is broad, it is quite common for IMS to transmit the request to a number of Directorate IROs who, in turn, might send it to components within their respective Directorates. Because the CIA's records are decentralized and compartmented,<sup>4</sup> each component must then devise its own search strategy, which includes identifying which of its records

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<sup>4</sup> The CIA's records systems are decentralized and compartmented due to the unique security and counterintelligence risks that the CIA faces.

systems to search as well as what search tools, indices, and terms to employ.

7. At the time of the submission of Plaintiff's FOIA request, all CIA components were contained within one of five Directorates or office clusters: the National Clandestine Service ("NCS"), the Directorate of Intelligence ("DI"), the Directorate of Science and Technology ("DS&T"), the Directorate of Support ("DS"), and the Director of the CIA Area ("DIR Area"). Appropriately trained personnel in each Directorate conducted FOIA searches of the Directorates' records systems as part of their normal responsibilities.

8. As of 1 October 2015, the NCS and the DI have been renamed as the Directorate of Operations ("DO") and the Directorate of Analysis ("DA"), respectively. Furthermore, a new Directorate, the Directorate of Digital Innovation, has been created. Appropriately trained personnel in each Directorate continue to conduct FOIA searches of the Directorates' records systems as part of their normal responsibilities.

9. The DO, formerly the NCS, is the organization within the CIA responsible for the clandestine collection of foreign intelligence from human sources. The DO's records system contains information on persons who are of foreign intelligence or counterintelligence interest to the CIA and other U.S. Government agencies. DO searches are limited by the

"operational file exemption" or "ops file exemption." The National Security Act of 1947 ("National Security Act"), 50 U.S.C. § 3141, provides that "the Director of the Central Intelligence Agency, with the coordination of the Director of National Intelligence, may exempt operational files of the Central Intelligence Agency from the provisions of Section 552 of Title 5, United States Code (Freedom of Information Act) which require publication or disclosure, or search or review in connection therewith." Databases containing DO operational files are exempt from FOIA and are not subject to search and review, as is discussed in more detail in Part IV.C.

10. The DA, formerly the DI, is the CIA Directorate that analyzes, interprets, and forecasts foreign intelligence issues and world events of importance to the United States. The DA is also responsible for the production of finished intelligence reports for dissemination to policymakers in the U.S. Government.

11. The DS&T is the CIA Directorate that creates and applies technology to fulfill intelligence requirements. The DS&T's "operational files" documenting the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems are also exempt from FOIA search and review pursuant to the National Security Act's operational file exemption.

12. The DS provides the CIA with mission-critical services including the protection of CIA personnel, security matters generally, facilities, communications, logistics, training, financial management, medical services, and human resources. It maintains records on all current and former CIA employees and contractors as well as other individuals for whom security processing or evaluation has been required. The CIA's Office of Security ("OS") is a component within the DS. Certain OS files are also exempt from FOIA search and review pursuant to the National Security Act's operational file exemption.

13. The DIR Area is a cluster of offices that reports directly to the Director of the CIA, such as the Office of General Counsel, the Office of Inspector General, and the Office of Congressional Affairs, and is distinct from the Agency's main directorates.<sup>5</sup>

14. Regardless of the Directorate or office, the CIA employees who perform the necessary searches in response to FOIA requests: (a) have access to the pertinent records; (b) are qualified to search those records; and (c) regularly search those records in the course of their professional duties.

15. After CIA officers perform the necessary searches for records containing information responsive to a FOIA request, the

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<sup>5</sup> This declaration does not describe the mission and duties of the newly created DDI because the CIA completed its searches before the DDI officially began operations on 1 October 2015 as part of the Agency's modernization initiative.

IROs review the responsive documents to determine which, if any, FOIA exemptions apply, and whether they can reasonably segregate nonexempt information from exempt information. In evaluating responsive documents, CIA officers have to segregate exempt information to avoid disclosure of classified information, to include information concerning CIA intelligence sources and methods, or other information protected by the FOIA exemptions.

16. When all of the components and IROs have completed their respective reviews, IMS officers conduct a final review from a corporate perspective on behalf of the entire CIA, and in some cases additional information is determined to be exempt from public disclosure. IMS incorporates all of the recommendations regarding exemptions, segregation, redaction and release, resolve conflicting recommendations as necessary, and ensure that the release or withholding determinations comply with published CIA regulations and are legally sound. A final copy of each document is then produced and IMS provides a final response to the requester.

### **III. PLAINTIFF'S FOIA REQUEST**

17. By letter dated 13 May 2010, Grant F. Smith ("Plaintiff") submitted a FOIA request to the CIA Information and Privacy Coordinator seeking the "declassification and release of all cross referenced CIA files related to uranium diversion from the Nuclear Materials and Equipment Corporation

(NUMEC) to Israel." A true and correct copy of Plaintiff's 13 May 2010 letter is attached as Exhibit A.

18. By letter dated 10 September 2010, the CIA acknowledged receipt of Plaintiff's FOIA request. The CIA's Acting Information and Privacy Coordinator noted that the Plaintiff's request had been assigned reference number F-2010-01210. The letter also advised Plaintiff that CIA operational files are exempt from FOIA's search, review, and disclosure requirements. A true and correct copy of CIA's 10 September 2010 letter is attached as Exhibit B.

19. By letter dated 28 August 2013, the CIA issued a final response to Plaintiff's FOIA request. The Agency's final response noted that the CIA had "completed a thorough search for records responsive to [Plaintiff's] request and located material that [CIA] determined is currently and properly classified and must be denied in its entirety on the basis of FOIA exemptions (b) (1) and (b) (3)." The Agency's letter also advised Plaintiff that the CIA had located four previously released documents which were believed to be responsive to Plaintiff's request. Those four documents were enclosed with the CIA's 28 August 2013 letter. A true and correct copy of CIA's 28 August 2013 letter and enclosures is attached as Exhibit C.

20. By letter dated 19 September 2013, Plaintiff appealed the CIA's 28 August 2013 determination. A true and correct copy

of Plaintiff's 19 September 2013 letter is attached as Exhibit D.

21. By letter dated 28 March 2014, the CIA informed Plaintiff that the Agency Release Panel ("ARP") had considered his appeal and "determined the material denied in its entirety is currently and properly classified and must continue to be protected from release on the basis of FOIA exemptions (b) (1) and (b) (3)." Plaintiff was advised that he could seek judicial review of the CIA's determination in a United States District Court. A true and correct copy of CIA's 28 March 2014 letter is attached as Exhibit E.

22. Plaintiff filed the instant action on 13 February 2015.

#### **IV. CIA'S SEARCH FOR RESPONSIVE RECORDS**

##### **A. CIA's Search for Records**

23. The CIA processed Plaintiff's FOIA request consistent with the procedures set forth in Part II above. Given the nature of Plaintiff's request, IMS determined that the DI, DIR Area, and NCS<sup>6</sup> were the Directorates reasonably likely to possess records responsive to the request. IMS determined that no other Directorate's files subject to FOIA were reasonably likely to contain responsive records. IMS tasked the DI, DIR Area and NCS

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<sup>6</sup> As mentioned previously, the DI and the NCS were recently renamed. For purposes of clarity and accuracy, this section will continue to refer to the Directorates by their former acronyms, "DI" and "NCS."

IROs to conduct a search of their non-exempt records repositories.

24. The DI conducted a search of its system of records that was reasonably calculated to discover any records responsive to Plaintiff's FOIA request. The DI conducted their search using a variation of terms that would retrieve documents responsive to Plaintiff's FOIA request for records "relating to uranium diversion from the Nuclear Materials and Equipment Corporation (NUMEC) to Israel." Search terms included "NUMEC," "Nuclear Materials and Equipment Corporation," "Israel," and "Uranium Diversion." The DI IRO searched three electronic databases. The first database contains documents which have been scanned into various case types (FOIA, Privacy Act, Executive Order Mandatory Declassification Review, etc.) for declassification review and potential release. It contains all document types, from disseminated intelligence to analysis, to Director-level correspondence. The second database is a web-based research, analysis, and collaboration environment. It contains published DI analytical products and disseminated NCS intelligence cables. The third database provides for the automated inventory of records retired to the Agency Archives and Records Center ("AARC"). The system contains pertinent information about retired records that is searchable, such as file folder titles. The system is used not only for the

retirement of records, but also for the ability to search and retrieve older electronic and paper records. The DI IRO determined that no other DI databases were reasonably expected to contain responsive material.

25. The DIR Area also conducted a search of its system of records that was reasonably calculated to discover any records responsive to Plaintiff's FOIA request. The DIR conducted their search using a variation of terms that would retrieve documents responsive to Plaintiff's FOIA request and "relating to uranium diversion from the Nuclear Materials and Equipment Corporation (NUMEC) to Israel." Search terms included "NUMEC," "Nuclear Materials and Equipment Corporation," "Nuclear Materials and Equipment Corporation to Israel," and "Uranium Diversion." The DIR Area searched two electronic databases. The first database serves as the official action tracking system for the Director of the Central Intelligence Agency. It is used by the DIR Area to record and disseminate all external taskings received by the Agency. The second database searched by the DIR Area was one of the databases that was previously discussed as having been searched by the DI, the database which provides for the automated inventory of records retired to the AARC. The DIR Area IRO determined that no other DIR Area databases were reasonably expected to contain responsive material.

26. The NCS also conducted a search of its system of records that was reasonably calculated to discover any records responsive to Plaintiff's FOIA request. The NCS conducted their search in one electronic database, which was previously discussed as having been searched by the DI and contains documents which have been scanned into various case types (FOIA, Privacy Act, Executive Order Mandatory Declassification Review, etc.) for declassification review and potential release. The NCS used a variation of terms designed to retrieve documents responsive to Plaintiff's FOIA request and "relating to uranium diversion from the Nuclear Materials and Equipment Corporation (NUMEC) to Israel." The NCS determined that any other information responsive to the Plaintiff's FOIA request would be found in the NCS's operational files. Under the FOIA operational files exemption, the CIA does not search its operational files unless an exception to the exemption is applicable, as discussed further below. Such an exception was not identified in this case, and the NCS did not conduct a search of the Agency's operational files in response to this request.

27. In sum, the DI, NCS and DIR Area IROs conducted searches of their respective non-exempt records repositories using a variation of terms including "NUMEC," "Nuclear Materials and Equipment Corporation," and "Uranium Diversion." All three

Directorates' searches were thorough and reasonably calculated to uncover any relevant material. Ultimately, the CIA searches led to the review of twenty-one (21) documents. Seventeen (17) responsive records that had never been released to the public were located, but ultimately a determination was made in August 2013 that the contents of the documents remained properly classified and should be withheld under FOIA exemptions (b) (1) and (b) (3). Four (4) responsive documents to the Plaintiff's FOIA request that had previously been released in part to the public were also reviewed, and those documents were produced to the Plaintiff in August 2013.

**B. ISCAP Ruling**

28. On 18 March 2014, the Interagency Security Classification Appeals Panel ("ISCAP"), a review board that issues rulings "on appeals by authorized persons who have filed classification challenges under Section 1.8 of E.O. 13526," overturned a number of CIA classification determinations for documents related to the alleged NUMEC diversion, including a December 1978 Government Accountability Office ("GAO") Report titled "Nuclear Diversion in the U.S.? 13 Years of Contradiction and Confusion." In light of ISCAP's ruling, the CIA conducted (a) another classification review of the documents that had previously been deemed responsive to Plaintiff's FOIA request,

and (b) a supplemental search of DS&T databases for records responsive to Plaintiff's request.

29. The DS&T did not locate any additional responsive documents as a result of their search efforts. In regards to the 17 documents that had initially been deemed responsive to the Plaintiff's FOIA request but had not been released, the CIA determined that 16 were now able to be released in segregable form with redactions made on the basis of FOIA exemptions (b) (1) and/or (b) (3). The CIA determined that one document still needed to be withheld in full on the basis of FOIA Exemptions (b) (1) and (b) (3). After consulting with other agencies that had equities in these documents, the CIA provided the 16 releasable documents to Plaintiff in redacted form on 31 August 2015.

**C. Operational File Exemption**

**i. Applicability of the Operational File Exemption**

30. Under 50 U.S.C. § 3141(a), the Director of the Central Intelligence Agency ("DCIA") "may exempt operational files of the Central Intelligence Agency from" the search and review requirements of FOIA. Per the statute, operational files are defined to include certain files of the NCS,<sup>7</sup> DS&T, and OS<sup>8</sup> that

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<sup>7</sup> As mentioned previously, the NCS was recently renamed the DO. For purposes of clarity and accuracy, this section will continue to refer to the Directorate by its former acronym "NCS."

<sup>8</sup> The CIA's Office of Security ("OS") is a component within the DS.

contain sensitive information about CIA sources and methods. For the NCS, "operational files" are those "which document the conduct of foreign intelligence or counterintelligence operations or intelligence or security liaison arrangements or information exchanges with foreign governments or their intelligence or security services." 50 U.S.C. § 3141(b)(1). For the DS&T, "operational files" are those "which document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems." 50 U.S.C. § 3141(b)(2). For the OS, "operational files" are those which "document investigations conducted to determine the suitability of potential foreign intelligence or counterintelligence sources." 50 U.S.C. § 3141(b)(3).

31. To maintain the integrity of the Agency's exempted operational files, the CIA has an Agency-wide regulation that details procedures for designating or eliminating the designation of operational files. This regulation provides that at any time, the Director of the National Clandestine Service, the Deputy Director of CIA for Science and Technology, and the Director of Security may recommend to the Director of the CIA adding categories of operational files under their jurisdiction for designation as exempt from search, review, publication, or disclosure under FOIA. The regulation also allows for eliminating previously designated categories of operational

files. Such written recommendations are required to explain how they meet the standards for designation (or elimination) and must be approved by the Director of the CIA. The regulation further provides that the Agency will notify Congress of all categories of files designated and any subsequent additions to or changes in those categories.

32. As an additional check to ensure that the CIA's exempted operational files continue to perform the functions set forth in 50 U.S.C. § 3141(b), and pursuant to 50 U.S.C. § 3141(g), the Agency has also established a process for the decennial review of exempted operational files. Under this process, the Director of the National Clandestine Service, the Deputy Director of CIA for Science and Technology, and the Director of Support, in consultation with the Chief of the CIA History Staff, are required to review the designations periodically, but not less than once every 10 years, and make recommendations to the Director of the CIA as to which files or portions thereof no longer require designation as exempt or those that now require designation as exempt. Such recommendations include considerations of the historical value or other public interest in the subject matter of a category of files.

33. Prior to being forwarded to the Director of the CIA for approval, the results of each decennial review of the

designations are independently reviewed by an Agency-wide Operational File Validation Team, which is chaired by the Director of Information Management with membership composed of the IROs for the National Clandestine Service, Directorate of Science and Technology, and Office of Security as well as representatives from the CIA History Staff, Office of General Counsel, Office of Congressional Affairs, and Office of Public Affairs. In conducting its validation, the Validation Team is directed to: (a) solicit public comments through a notice published in the Federal Register regarding historical and other public interests that should be taken into account in the designation process; (b) invite organizations known to have views about historical and other public interests to provide those views; (c) assure that an adequate sampling has been made of the files subject to the proposed designations to confirm that the categories and subcategories squarely fall within the boundaries of the statute, that the actual records in the file categories are the appropriate ones to have been filed there, and that the information in those records could not be meaningfully declassified and released if subject to the FOIA line-by-line review and release process; and (d) perform studies of and make recommendations about any specific proposed limitations to the proposed designations of files to be approved by the Director of the CIA.

34. Beyond these processes for obtaining Director of the CIA approval to designate, or eliminate the designation of, operational files, the CIA Directorates also have in place their own internal procedures that serve to further ensure that operational files are opened and maintained for appropriate purposes. For example, the NCS has established a process involving multiple layers of review before a document ends up residing in an exempt operational file. First, to open a new file within an exempt file series, an officer must submit a written request that is reviewed and approved by specially trained staff. The staff determines, among other things, whether the proposed file would perform one of the statutory functions. If it would not, the request is rejected. Second, records tagged by an officer to go into an operational file are subsequently reviewed on a document-by-document basis to confirm that such placement is appropriate. Finally, periodic audits are conducted to verify that the operational files are being maintained for proper purposes. These processes collectively ensure that exempt operational files do, in fact, perform the statutory functions.

35. In this case, the operational files reasonably likely to contain records about the alleged NUMEC diversion, if any, are maintained by the NCS. Consistent with 50 U.S.C. § 3141(f)(4)(B), I have not reviewed the content of any of these

operational files prior to making this submission. Rather, the processes and procedures followed by the CIA and described above provide the basis for the determination that the Agency's operational files, including those most likely to contain records on the alleged NUMEC diversion, currently perform the functions set forth in 50 U.S.C. § 3141(b) by, among other things, properly documenting the conduct of foreign intelligence operations.

**ii. Exceptions to the Operational File Exemption are Inapplicable**

36. Consistent with 50 U.S.C. § 3141(a), the CIA did not search its operational files in connection with Plaintiff's FOIA request. I understand, however, that Plaintiff argues that an exception to the operational file exemption is applicable in relation to his FOIA request. Specifically, I understand that Plaintiff notes in his "Notice of Supplemental Exhibits" that, under 50 U.S.C. § 3141(c)(3), "exempted operational files shall be subject to search and review for information concerning . . . the specific subject matter of an investigation by the intelligence committees of the Congress, the Intelligence Oversight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, the Office of Inspector General of the Central Intelligence Agency, or the Office of the Director of Central Intelligence for any

impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity.”

37. As part of his “Notice of Supplemental Exhibits,” I understand that Plaintiff has provided the court with a number of documents which he argues trigger the applicability of this exception to the operational files exemption. As explained below, I have examined these documents and determined that the operational files exemption continues to apply in this case because Plaintiff does not point to an investigation by any of the enumerated entities for any impropriety or violation in the conduct of an intelligence activity.

38. Plaintiff cites to a 22 April 1976 memorandum for the President from U.S. Attorney General Edward Levi about NUMEC that states “I believe it necessary to conduct an investigation.” However, the memorandum indicates that the proposed investigation concerns “the alleged discrepancy in nuclear materials at NUMEC” and that “Section 2271 of the Atomic Energy Act provides that ‘the Federal Bureau of Investigation of the Department of Justice shall investigate all alleged or suspected criminal violations’ of the Act.” Moreover, rather than focusing on the CIA or its employees, the memorandum broadly focuses on the entire Government, stating that the investigation “should consider whether any dismissal or other

disciplinary proceedings may be appropriate with response to any persons presently employed as federal officials who may have participated in or concealed any offense." Thus, while the memorandum discusses a proposed criminal investigation by the FBI under the Atomic Energy Act in connection with the alleged discrepancy in nuclear materials at NUMEC, there is nothing in the memorandum to suggest that it was "an investigation . . . for any impropriety, or violation of law . . . in the conduct of an intelligence activity."

39. Plaintiff also cites to a Department of Justice memorandum dated 3 March 1976 and related correspondence indicating that Senator Howard H. Baker, Chairman of the Joint Committee on Atomic Energy, had requested a briefing on the FBI's investigation into the diversion of nuclear materials. Once again, while this document clearly reveals that the FBI was conducting some type of investigation, these documents do not indicate that the referenced FBI investigation was "an investigation . . . for any impropriety, or violation of law . . . in the conduct of an intelligence activity."

40. Plaintiff also cites to a 7 December 1978 memorandum from Legal Counsel to the FBI Director about "the FBI investigation into an alleged diversion of special nuclear material from the Nuclear Material Equipment Corporation" that states a Department of Justice Task Force was "attempting to

determine if there is any individual agency in the Government which knew about a possible violation of the Atomic Energy Act and did nothing about it." While this memorandum suggests that a Department of Justice investigation of the entire Government's response to the alleged NUMEC diversion took place, the letter does not indicate that this was "an investigation . . . for any impropriety, or violation of law . . . in the conduct of an intelligence activity."

41. Plaintiff also cites to a 25 April 1979 memorandum to the Attorney General from Frederick D. Baron which states that the "Internal Security Section has now completed a detailed review of thousands of CIA documents." While this memorandum indicates that the FBI and/or Department of Justice reviewed CIA records as part of its NUMEC investigation, the memorandum does not indicate that the CIA or its employees were necessarily under investigation. Because the CIA is in the business of collecting information, the Department of Justice routinely reviews documents in the CIA's possession that may be relevant in a wide variety of criminal investigations. For instance, in a counterterrorism prosecution, it is not uncommon for the Department of Justice to send the CIA a prudential search request to see if the CIA has records that may be relevant to their investigation. In this case, it is clear that CIA had an interest in the alleged NUMEC diversion. Indeed, one of the

documents released to Plaintiff states: "In March 1968 the DCI requested the Attorney General to direct the FBI to investigate the possibility that a diversion had taken place." Accordingly, the 25 April 1979 memorandum's reference to the fact that the Department of Justice reviewed CIA documents is not unusual and does not establish that there was "an investigation . . . for any impropriety, or violation of law . . . in the conduct of an intelligence activity."

42. Plaintiff also states that the GAO conducted a NUMEC-related investigation. However, the GAO is not one of the committees, agencies, and/or offices enumerated in the statute such that its investigations might trigger an exception to the operational file exemption. As stated above, the exception covers only investigations by "the congressional intelligence committees, the Intelligence Oversight Board, the Department of Justice, the Office of General Counsel of the Central Intelligence Agency, or the Office of the Director of National Intelligence."

43. Finally, Plaintiff cites to a number of memoranda, provided to the Plaintiff by the CIA in its 31 August 2015 production, which summarize briefings that the CIA provided to members of Congress in the late 1970's in connection with the alleged NUMEC diversion. My review of the memoranda cited by the Plaintiff, and prepared by Agency officials, suggest that

CIA officers were informing, educating and advising members of Congress in connection with the alleged NUMEC diversion, rather than being the subject of a congressional investigation. While the CIA communicated with Congress about the alleged NUMEC diversion, these documents do not indicate that an "intelligence committee" of Congress, or any other investigative body enumerated in the statute, was conducting an investigation of the CIA's intelligence activities.

44. Consequently, in connection with the alleged NUMEC diversion, the documents cited by Plaintiff do not establish the existence of an investigation into any alleged impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity. As a result, the Agency has not searched its exempt operational files in connection with the Plaintiff's FOIA request.

**V. APPLICATION OF FOIA EXEMPTIONS**

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

45. FOIA exemption (b) (1) provides that FOIA does not require the production of records that are: "specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" and "are in fact properly classified pursuant to such Executive order." 5 U.S.C. § 552(b) (1).

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

47. Consistent with section 1.1(a) of Executive Order 13526, and as described below, I have determined that the information being withheld is properly classified and concerns "intelligence activities," "intelligence sources or methods" and "U.S. foreign relations" under section 1.4 of the Executive Order, the records are owned and under the control of the U.S. Government, and the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security.

48. My determination that certain information in the requested records is classified has not been made to conceal

violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interests of national security.

**i. Description of Classified Information**

49. I have reviewed the responsive documents and determined that they contain information that is currently and properly classified up to the TOP SECRET level. Specifically, as explained below, I have determined that this information has been properly withheld because its disclosure could lead to the identification of intelligence sources, methods, and activities of the CIA and/or harm foreign relations or foreign activities of the United States within the meaning of section 1.4 of Executive Order 13526. As such, disclosure of this information could reasonably be expected to result in damage, including exceptionally grave damage, to national security. I describe the general categories of classified information below and, to the extent possible on the public record, provide examples of the type of information that falls within each category.

**ii. Intelligence Sources**

50. Some of the classified information in the responsive documents relates to intelligence sources. One of the major functions of the CIA is to collect foreign intelligence from

around the world for the President and other United States Government officials to use in making policy decisions. To accomplish this function, the CIA must rely on information from knowledgeable sources that the CIA can obtain only under an arrangement of absolute secrecy. Intelligence sources will rarely furnish information unless they are confident that they are protected from retribution or embarrassment by the absolute secrecy surrounding the source-CIA relationship. In other words, intelligence sources must be certain that the CIA can and will do everything in its power to prevent the public disclosure of their association with the CIA forever.

51. Human Sources. The CIA relies on individuals around the world to collect foreign intelligence, and it does so with the promise that the CIA will keep their identities secret and prevent public disclosure. This is because the CIA's revelation of this secret relationship could harm the individual. For example, in the case of a foreign national abroad who cooperates with the CIA without the knowledge of his or her government, the consequences of the disclosure of this relationship are often swift and far-ranging, from economic reprisals to harassment, imprisonment, and even death. In addition, such disclosure could place in jeopardy the lives of individuals with whom the foreign national has had contact, including his or her family and associates.

52. Moreover, the release of information that would or could identify an intelligence source would damage the CIA's credibility with other current intelligence sources and undermine the CIA's ability to recruit future sources. As stated previously, most individuals will not cooperate with the CIA unless they have confidence that their identities will remain forever secret. Additionally, the CIA itself has a primary interest in keeping these identities secret, not only to protect the sources, but also to demonstrate to other sources and future sources that these sources can trust the CIA to preserve the secrecy of the relationship.

53. If a potential source has any doubts about the ability of the CIA to preserve secrecy -- that is, if he or she were to learn that the CIA had disclosed the identity of another source -- his or her desire to cooperate with the CIA would likely diminish. In other words, sources, be they present or future, usually will not work for the CIA if they are convinced or believe that the CIA may not protect their identities. The loss of such intelligence sources, and the accompanying loss of the critical intelligence that they provide, would seriously and adversely affect the national security of the United States.

54. Foreign Government Sources. The CIA also relies on foreign governments as sources of intelligence. Both foreign intelligence services and individual foreign government

officials provide sensitive information in strict confidence to the CIA on issues of importance to U.S. foreign relations and national security. These services and officials convey information to the CIA with the CIA's express agreement that the content of the information, as well as the mere fact of the relationship through which they have provided the information, will remain secret.

55. If the CIA were to violate this express agreement, internal or external political pressure on the foreign government could cause the foreign liaison service or foreign government official to limit or even end the CIA relationship, causing the U.S. Government to lose valuable foreign intelligence. In fact, this political pressure could compel the foreign government to take defensive actions against the CIA, such as reducing the approved CIA presence in that country, which would further damage CIA's ability to collect intelligence about other countries or persons operating in that country.

**iii. Intelligence Methods**

56. The responsive documents also contain classified information relating to intelligence methods. Generally, intelligence methods are the means by which the CIA accomplishes its mission. The Director of the CIA has broad authority to protect intelligence methods.

57. Knowledge of the methods and practices of an intelligence agency must be protected from disclosure because such knowledge would be of material assistance to those who would seek to penetrate, detect, prevent, or damage the intelligence operations of the United States. The result of disclosure of a particular method can lead to the neutralization of that method, whether the method is used for the collection of intelligence information, the conduct of clandestine activities, or the analysis and evaluation of intelligence information.

58. Cover. One specific intelligence method used by the CIA is cover. In order to carry out its mission of gathering and disseminating intelligence information, the CIA places individual CIA employees under cover to protect the fact, nature, and details of the CIA's interest in foreign activities and the intelligence sources and methods employed to assist those activities. The CIA considers the cover identities of individual employees and cover mechanisms both to be intelligence methods.

59. The purpose of cover is to provide a believable, non-threatening reason for a CIA officer to move around and meet individuals of intelligence interest to the United States, and to do so without attracting undue attention.

60. Disclosing the identity of an undercover employee could expose the intelligence activities with which the employee

has been involved, the sources with whom the employee has had contact, and other intelligence methods used by the CIA. Compromise of an officer's cover not only reveals his or her intelligence officer status, but also allows hostile intelligence services and terrorist organizations to find out precisely the location in which that person works. In fact, disclosing the identity of an undercover employee could jeopardize the life of the employee, his or her family, his or her sources, and even innocent individuals with whom he or she has had contact.

61. Foreign Intelligence Relationships. As discussed above, the CIA obtains foreign intelligence and assistance through liaison relationships with foreign intelligence and security services and foreign government officials. The details of these relationships constitute intelligence methods, the disclosure of which could hamper intelligence gathering.

62. Dissemination-Control Information. The CIA also employs a number of intelligence methods to disseminate intelligence-related information and protect it from unauthorized disclosure. These methods include procedures for marking documents to indicate the presence of particularly sensitive information contained in the documents. They also include some internal routing and administrative information that is used to track and control information. Disclosure of

this type of information can reveal or highlight areas of particular intelligence interest, sensitive collection sources or methods, foreign sensitivities, and procedures for gathering, protecting, and processing intelligence.

**iv. Intelligence Activities**

63. There is also classified information in the responsive documents that relates to intelligence activities. Intelligence activities refer to the actual implementation of intelligence methods in the operational context. Intelligence activities are highly sensitive because their disclosure often would reveal details regarding specific intelligence methods which, in turn, could provide America's current adversaries with valuable insight into CIA operations that would impair the effectiveness of CIA's intelligence methods.

64. If a hostile entity learns that its activities have been targeted by, or are of interest to, the CIA, it can take countermeasures to make future intelligence collection activities less effective and more dangerous. Foreign intelligence services and terrorist organizations also seek to glean from the CIA's interests what information the CIA has received, why the CIA is focused on that type of information, and how the CIA will seek to use that information for further intelligence collection efforts and clandestine intelligence activities. If foreign intelligence services or hostile groups

were to discover what the CIA has learned or not learned about certain individuals or groups, that information could be used against the CIA to thwart future intelligence operations, jeopardize human sources, and otherwise derail the CIA's intelligence collection efforts.

**v. Foreign Relations or Foreign Activities**

65. Finally, the responsive documents also contain classified information concerning the foreign relations or foreign activities of the United States. The documents address confidential discussions between the United States government and various foreign governments, and they contain other confidential information about the foreign relations of the United States. Public disclosure of this confidential information could harm the United States' relations with the countries in question and could generally make it more difficult for the United States to engage in activities abroad.

66. Additionally, I note that although the information withheld is rather old, it is by no means obsolete. The type of tools the Agency has previously used to collect, vet, and synthesize information and intelligence obtained using those methods tends to indicate the CIA's current collection efforts and activities. Disclosures that could identify past or current intelligence sources and methods utilized by the CIA would reduce the Agency's ability to collect important intelligence

information and create accurate threat reporting and analytical products for U.S. policymakers. Exposure of a previous source could still, as highlighted above, place the source (if still alive) and/or his/her family and associates in jeopardy, and impair the Agency's ability to recruit future sources.

67. For all of these reasons, the CIA cannot disclose certain classified information in the responsive documents relating to intelligence sources, intelligence methods, intelligence activities, and foreign relations or foreign activities. That information remains currently and properly classified pursuant to the criteria of Executive Order 13526, as its disclosure could reasonably be expected to cause damage, even exceptionally grave damage, to the national security of the United States.

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

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

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

5 U.S.C. § 552(b) (3).

69. Section 102A(i) (1) of the National Security Act of 1947, as amended, 50 U.S.C. § 3024(i) (1) (the "National Security

Act”), provides that the Director of National Intelligence (“DNI”) “shall protect intelligence sources and methods from unauthorized disclosure.” Accordingly, the National Security Act constitutes a federal statute which “requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue.” 5 U.S.C. § 552(b)(3). Under the direction of the DNI pursuant to section 102A, and consistent with section 1.6(d) of Executive Order 12333, the CIA is authorized to protect CIA sources and methods from unauthorized disclosure.<sup>9</sup> As demonstrated in Part V of this Declaration, providing Plaintiff with the classified information that has been withheld by the CIA would reveal information that concerns intelligence sources and methods, which the National Security Act is designed to protect.

70. Additionally, Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C. § 403g (the “CIA Act”), provides that the CIA shall be exempted from “the provisions of any other law” (in this case, FOIA) “which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency.” The Central Intelligence Agency Act of

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<sup>9</sup> Section 1.6(d) of Executive Order 12333, as amended, 3 C.F.R. 200 (1981), *reprinted in* 50 U.S.C.A. § 401 note at 25 (West Supp. 2009), and as amended by Executive Order 13470, 73 Fed. Reg. 45,323 (July 30, 2008) requires the Director of Central Intelligence Agency to “[p]rotect intelligence and intelligence sources, methods, and activities from unauthorized disclosure in accordance with guidance from the [DNI][.]”

1949 therefore constitutes a federal statute which "establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3).

71. Because the information withheld by the CIA in this case falls within the ambit of the National Security Act and the CIA Act, it is exempt from disclosure under FOIA exemption (b)(3). In contrast to Executive Order 13526, these (b)(3) qualified statutes do not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from the unauthorized disclosure of intelligence sources and methods or CIA organizational details and functions. Nonetheless, I refer the Court to the paragraphs above for a description of the damage to the national security should there be an unauthorized disclosure of the classified information at issue in this case.

**VI. CONCLUSION**

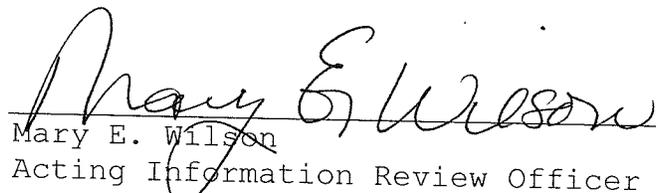
72. For all of the reasons stated above, I have determined that the CIA records responsive to Plaintiff's FOIA request contain classified information concerning CIA's intelligence activities and intelligence sources and methods, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security of the United States. Consequently, that information must be withheld under FOIA exemption (b)(1). Additionally, and separately, because the

classified information implicates intelligence sources and methods, as well as functions of the CIA, the information must also be withheld under FOIA exemption (b)(3). Finally, the CIA has not searched its operational files as those files remain exempt from FOIA under 50 U.S.C. § 3141(a).

\* \* \*

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

Executed this 23<sup>rd</sup> day of December 2015.

  
Mary E. Wilson  
Acting Information Review Officer  
Litigation Information Review Office  
Central Intelligence Agency

# EXHIBIT A

**IRmep**  
**Calvert Station**  
**P.O. Box 32041**  
**Washington, DC 20007**

**http://www.irmep.org**  
**info@irmep.org**  
**Phone: 202-342-7325**  
**Fax: 202-318-8009**



Institute for Research: Middle Eastern Policy

Thursday, May 13, 2010

Delores M. Nelson  
Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, D.C. 20505

Fax: (703) 613-3007

RE: FOIA Request

Dear Coordinator,

Under the Freedom of Information Act, 5 U.S.C. subsection 552, I am requesting declassification and release of all cross referenced CIA files related to uranium diversion from the Nuclear Materials and Equipment Corporation (NUMEC) to Israel. This request includes, but is not limited to CIA content provided for publication in the now declassified 1978 GAO report titled "Nuclear Diversion in the U.S.? 13 Years of Contradiction and Confusion."

We request a waiver of all fees for this request as a nonprofit, tax exempt research organization. Disclosure of the requested information to IRmep is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in our commercial interest.

If you have any questions about handling this request, please call me at 202-342-7325.

Sincerely,

Grant F. Smith  
Director of Research

Cc: Cover "Nuclear Diversion in the U.S.? 13 Years of Contradiction and Confusion."

MAY 18 2010

# EXHIBIT B

Central Intelligence Agency



Washington, D.C. 20505

10 September 2010

Mr. Grant F. Smith  
Director of Research  
Institute for Research: Middle Eastern Policy  
Calvert Station  
P.O. Box 32041  
Washington, D.C. 20007

Reference: F-2010-01210

Dear Mr. Smith:

On 18 May 2010, the office of the Information and Privacy Coordinator received your 13 May 2010 Freedom of Information Act (FOIA) request for records "relating to uranium diversion from the Nuclear Materials and Equipment Corporation (NUMEC) to Israel." We have assigned your request the reference number above. Please use this number when corresponding so that we can identify it easily.

The CIA Information Act, 50 U.S.C. § 431, as amended, exempts CIA operational files from the search, review, publication, and disclosure requirements of the FOIA. To the extent your request seeks information that is subject to the FOIA, we accept your request and will process it in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act. Unless you object, we will limit our search to CIA-originated records existing through the date of this acceptance letter. As a matter of administrative discretion, and in accordance with our regulations, the Agency has waived the fees for this request.

The large number of FOIA requests CIA receives has created unavoidable delays making it unlikely that we can respond within the 20 working days the FOIA requires. You have the right to consider our honest appraisal as a denial of your request and you may appeal to the Agency Release Panel. A more practical approach would permit us to continue processing your request and respond to you as soon as we can. You will retain your appeal rights and, once you receive the results of our search, can appeal at that time if you wish. We will proceed on that basis unless you object.

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Koch", written over a horizontal line.

Scott Koch  
Acting Information and Privacy Coordinator

# EXHIBIT C

Central Intelligence Agency



Washington, D.C. 20505

28 August 2013

Mr. Grant F. Smith  
Director of Research  
Institute for Research: Middle Eastern Policy  
Calvert Station  
P.O. Box 32041  
Washington, DC 20007

Reference: F-2010-01210

Dear Mr. Smith:

This is a final response to your 13 May 2010 Freedom of Information Act (FOIA) request for records "relating to uranium diversion from the Nuclear Materials and Equipment Corporation (NUMEC) to Israel." We processed your request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 431, as amended. Our processing included a search for records as described in our 10 September 2010 acceptance letter.

We completed a thorough search for records responsive to your request and located material that we determined is currently and properly classified and must be denied in its entirety on the basis of FOIA exemptions (b)(1) and (b)(3). An explanation of exemptions is enclosed. Exemption (b)(3) pertains to information exempt from disclosure by statute. The relevant statute is the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g, as amended, Section 6, which exempts from the disclosure requirement information pertaining to the organization and functions, including those related to the protection of intelligence sources and methods. As the CIA Information and Privacy Coordinator, I am the CIA official responsible for this determination. You have the right to appeal this response to the Agency Release Panel, in my care, within 45 days from the date of this letter. Please include the basis of your appeal.

We conducted a search of our previously released database and located the enclosed four documents, totaling 11 pages, which we believe may be responsive to your request. Please be advised that these documents were released as part of another release program.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Meeks".

Michele Meeks  
Information and Privacy Coordinator

Enclosures

### Explanation of Exemptions

#### Freedom of Information Act:

- (b)(1) exempts from disclosure information currently and properly classified, pursuant to an Executive Order;
- (b)(2) exempts from disclosure information, which pertains solely to the internal personnel rules and practices of the Agency;
- (b)(3) exempts from disclosure information that another federal statute protects, provided that the other federal statute either requires that the matters be withheld, or establishes particular criteria for withholding or refers to particular types of matters to be withheld. The (b)(3) statutes upon which the CIA relies include, but are not limited to, the CIA Act of 1949;
- (b)(4) exempts from disclosure trade secrets and commercial or financial information that is obtained from a person and that is privileged or confidential;
- (b)(5) exempts from disclosure inter-and intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) exempts from disclosure information from personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy;
- (b)(7) exempts from disclosure information compiled for law enforcement purposes to the extent that the production of the information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source or, in the case of information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source ; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) could reasonably be expected to endanger any individual's life or physical safety;
- (b)(8) exempts from disclosure information contained in reports or related to examination, operating, or condition reports prepared by, or on behalf of, or for use of an agency responsible for regulating or supervising financial institutions; and
- (b)(9) exempts from disclosure geological and geophysical information and data, including maps, concerning wells.

April 2012

C03250307

Approved For Release 2006/12/04 : CIA-RDP81M00980R001500050015-5

DD/O 78-5538/2

S E C R E T

OC #78-1667/7

5 OCT 1978

GAO

MEMORANDUM FOR: Director of Central Intelligence

VIA : Deputy Director of Central Intelligence

FROM : John H. Stein  
Acting Deputy Director for Operations

SUBJECT : GAO Report on Alleged Nuclear Diversion

REFERENCE : Our memorandum on the same subject,  
dated 30 August 1978

1. Action Requested. Review options outlined in paragraph 3 and note recommendations.

2. Background. Since forwarding Reference to GAO, there has been no response to our letter. We assume the report, as previously drafted, will stand. GAO has asked us to declassify our contributions to this report. We have worked on sanitization of the report, and this version is attached. The FBI also has been asked to sanitize their contribution and is taking the position that they will not declassify. The Department of Energy's position also is that they do not want to declassify their portion.

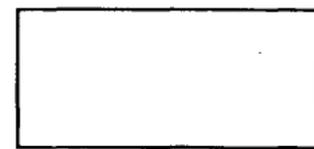
3. Staff Position. This leaves us with two options:

a. Clear the sanitized report for passage to GAO:

(1) Pro - This is responsive to GAO's request.

25X1

S E C R E T



MOR/CDP

C03250307

Approved For Release 2006/12/04 : CIA-RDP81M00980R001500050015-5

S E C R E T

-2-

(2) Con - In our sanitized report, every effort was made to protect intelligence sources and methods [redacted]

25X1

[redacted] however, the sanitized report still would reveal sensitive information when considered together with the unclassified collateral material [redacted] which has appeared in the press and which the House Committee on Interior and Insular Affairs has published in a booklet. [redacted]

25X1

[redacted]

25X1  
25X1

b. Advise GAO that we cannot declassify our report because of the need to have a coordinated Executive Branch position and our desire to protect a sensitive and valuable liaison equity.

(1) Pro - (Our reasons are identical to those stated in paragraph 3a(2) above.)

(2) Con - This is unresponsive to GAO's desires.

4. Coordination. This has been coordinated with OLC, OGC, NE Division and CTS.

5. Recommendation. Option B. If you concur, GAO will be advised orally by OLC.

John H. Stein

John H. Stein

Attachments:

- A. GAO report
- B. Booklet; [redacted]

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S E C R E T

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Approved For Release 2006/12/04 : CIA-RDP81M00980R001500050015-5

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Approved For Release 2006/12/04 : CIA-RDP81M00980R001500050015-5

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Approved For Release 2004/10/12 : CIA-RDP81M00980R001500050016-4

*OLC 78-1667/7* *78-5538/2*

S E C R E T

*78-1819/3*

6 OCT 1978

*SAO*

MEMORANDUM FOR: Director of Central Intelligence

VIA : Deputy Director of Central Intelligence

FROM : John H. Stein  
Acting Deputy Director for Operations

SUBJECT : GAO Report on Alleged Nuclear Diversion

REFERENCE : Our memorandum on the same subject,  
dated 30 August 1978

*10/11/1978*

1. Action Requested. Review options outlined in paragraph 3 and note recommendations.

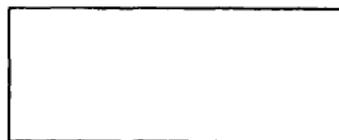
2. Background. Since forwarding Reference to GAO, there has been no response to our letter. We assume the report, as previously drafted, will stand. GAO has asked us to declassify our contributions to this report. We have worked on sanitization of the report, and this version is attached. The FBI also has been asked to sanitize their contribution and is taking the position that they will not declassify. The Department of Energy's position also is that they do not want to declassify their portion.

3. Staff Position. This leaves us with two options:

a. Clear the sanitized report for passage to GAO:

(1) Pro - This is responsive to GAO's request.

S E C R E T



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Approved For Release 2004/10/12 : CIA-RDP81M00980R001500050016-4

C03242743

Approved For Release 2004/07/16 : CIA-RDP81M00980R000800090051-9

DDO 78-5538/1

S E C R E T

OSD #78-1667/7

6 OCT 1978

*Rpts*

MEMORANDUM FOR: Director of Central Intelligence

VIA : Deputy Director of Central Intelligence

FROM : John H. Stein  
Acting Deputy Director for Operations

SUBJECT : GAO Report on Alleged Nuclear Diversion

REFERENCE : Our memorandum on the same subject,  
dated 30 August 1978

1. Action Requested. Review options outlined in paragraph 3 and note recommendations.

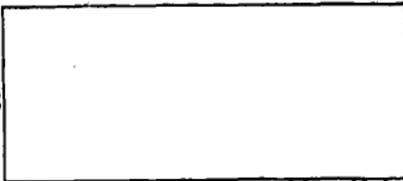
2. Background. Since forwarding Reference to GAO, there has been no response to our letter. We assume the report, as previously drafted, will stand. GAO has asked us to declassify our contributions to this report. We have worked on sanitization of the report, and this version is attached. The FBI also has been asked to sanitize their contribution and is taking the position that they will not declassify. The Department of Energy's position also is that they do not want to declassify their portion.

3. Staff Position. This leaves us with two options:

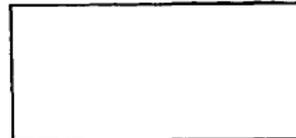
a. Clear the sanitized report for passage to GAO:

(1) Pro - This is responsive to GAO's request.

ILLEGIB



S E C R E T



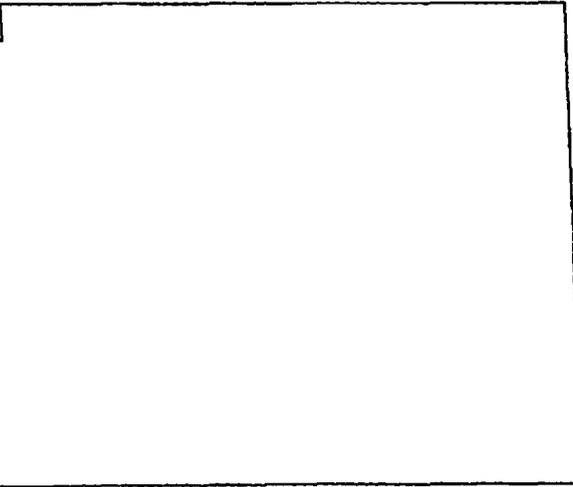
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Approved For Release 2004/07/16 : CIA-RDP81M00980R000800090051-9

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Approved For Release 2004/07/16 : CIA-RDP81M00980R000800090051-9

S E C R E T  
-2-

(2) Con - 

25X1

b. Advise GAO that we cannot declassify our report because of the need to have a coordinated Executive Branch position and our desire to protect a sensitive and valuable liaison equity.

(1) Pro - (Our reasons are identical to those stated in paragraph 3a(2) above.)

(2) Con - This is unresponsive to GAO's desires.

4. Coordination. This has been coordinated with OLC, OGC, NE Division and CTS.

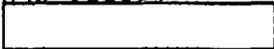
5. Recommendation. Option B. If you concur, GAO will be advised orally by OLC.

John H. Stein

John H. Stein

Attachments:

A. GAO report

B. 

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S E C R E T

Approved For Release 2004/07/16 : CIA-RDP81M00980R000800090051-9

C03242743

Approved For Release 2004/07/16 : CIA-RDP81M00980R000800090051-9

S E C R E T

-3-

Distribution:

- Orig - Addressee w/atts
- 1 - DDCI w/atts
- 2 - Executive Registry w/o atts
- 1 - ADDO w/atts
- 2 - DDO Registry w/o atts
- 1 - C/NE w/o atts
- 1 - C/NE hold w/o atts
- 1 - OLC w/o atts
- 1 - OGC w/atts
- 1 - CTS w/o atts
- 1 - NE/ISR w/atts
- 1 - NE/ISR w/o atts
- 1 - NE/ISR hold w/o atts

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C03240476

Approved For Release 2006/11/27 : CIA-RDP81M00980R001800060024-1

78-5538/2

S E C R E T

W.C. #78-1667/7

9.001 1978

DD

MEMORANDUM FOR: Director of Central Intelligence

VIA : Deputy Director of Central Intelligence

FROM : John H. Stein  
Acting Deputy Director for Operations

SUBJECT : GAO Report on Alleged Nuclear Diversion

REFERENCE : Our memorandum on the same subject,  
dated 30 August 1978

1. Action Requested. Review options outlined in paragraph 3 and note recommendations.

2. Background. Since forwarding Reference to GAO, there has been no response to our letter. We assume the report, as previously drafted, will stand. GAO has asked us to declassify our contributions to this report. We have worked on sanitization of the report, and this version is attached. The FBI also has been asked to sanitize their contribution and is taking the position that they will not declassify. The Department of Energy's position also is that they do not want to declassify their portion.

3. Staff Position. This leaves us with two options:

a. Clear the sanitized report for passage to GAO:

(1) Pro - This is responsive to GAO's request.

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S E C R E T



MORI/CDF

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Approved For Release 2006/11/27 : CIA-RDP81M00980R001800060024-1

S E C R E T

-2-

25X1

(2) Con - In our sanitized report, every effort was made to protect intelligence sources and methods [redacted]

25X1

[redacted] however, the sanitized report still would reveal sensitive information when considered together with the unclassified collateral material [redacted] which has appeared in the press and which the House Committee on Interior and Insular Affairs has published in a booklet. [redacted]

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[redacted]

b. Advise GAO that we cannot declassify our report because of the need to have a coordinated Executive Branch position and our desire to protect a sensitive and valuable liaison equity.

(1) Pro - (Our reasons are identical to those stated in paragraph 3a(2) above.)

(2) Con - This is unresponsive to GAO's desires.

4. Coordination. This has been coordinated with OLC, OGC, NE Division and CTS.

5. Recommendation. Option B. If you concur, GAO will be advised orally by OLC.

John H. Stein

John H. Stein

Attachments:

- A. GAO report
- B. Booklet, [redacted]

25X1

S E C R E T

C03240476

Approved For Release 2006/11/27 : CIA-RDP81M00980R001800060024-1

S E C R E T

-3-

Distribution:

- Orig - Addressee w/atts
- 1 - DDCI w/atts
- 2 - Executive Registry w/o atts
- 1 - ADDO w/atts
- 2 - DDO Registry w/o atts
- 1 - C/NE w/o atts
- 1 - C/NE hold w/o atts
- 1 - OLC w/o atts
- 1 - OGC w/atts
- 1 - CTS w/o atts
- 1 - NE/ISR w/atts
- 1 - NE/ISR w/o atts
- 1 - NE/ISR hold w/o atts

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Orig: [redacted] :C/NE/[redacted] rmw:6C18 [redacted] 3 Oct 78

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S E C R E T

Approved For Release 2006/11/27 : CIA-RDP81M00980R001800060024-1

# EXHIBIT D

**IRMep**  
**Calvert Station**  
**P.O. Box 32041**  
**Washington, DC 20007**

**<http://www.irmep.org>**  
**[info@irmep.org](mailto:info@irmep.org)**  
**Phone: 202-342-7325**  
**Fax: 202-318-8009**



Thursday, September 19, 2013

Agency Release Panel  
Michele Meeks, Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, D.C. 20505

Reference: F-2010-01210 CIA records "relating to uranium diversion from the Nuclear Materials and Equipment Corporation (NUMEC) to Israel."

Dear Michele Meeks,

On August 28, 2013 the CIA denied in entirety the release of material on the above-referenced FOIA request of May 13, 2010. (Attached) We appeal to the Agency Release Panel to reconsider this denial and release in full all requested records, including the Carter administration Nuclear Materials and Equipment Corporation (NUMEC) files.

The CIA Information Act of 1984, cited in the Agency's September 10, 2010 FOIA confirmation letter (Attached), provided guidance over the review for release of relevant CIA files. As an outside public-interest nonprofit, it is impossible for us to know whether the majority of the CIA's thousands of files about NUMEC are considered to be "operational" or not. We believe they probably should not be since the diversion was not a CIA operation, according to officials who spoke publicly about the matter.

Carl Duckett, the executive director for CIA operations, revealed that CIA Director Richard Helms wrote a classified letter to Attorney General Ramsey Clark telling him that highly enriched uranium "processed at Apollo might have ended up at Dimona" and requested that the FBI investigate NUMEC and its officials, many who had strong ties to Israel. Helms also informed President Lyndon Johnson about Israel's nuclear weapons program, to which LBJ famously responded, "Don't tell anyone else, even [Secretary of State] Dean Rusk and [Defense Secretary] Robert McNamara."<sup>1</sup> CIA Tel Aviv Station Chief John Hadden called the NUMEC incident an "Israeli operation from the beginning." These and other comments by CIA officials imply that while the diversion of weapons-grade uranium from Apollo to Dimona was indeed an operation, it was not a clandestine CIA operation authorized by a presidential finding, and is therefore probably unworthy of the decades of agency refusals to researchers seeking file release.

However, even if CIA considers NUMEC files to be "operational files," under Sec. 702 "Decennial review of exempted operational files" the CIA would have had to have conducted ten-year reviews for removal of exemptions for release of NUMEC files. In particular, under subsection (b) CIA would have had to consider the historical value and ongoing heavy public interest in the subject matter.

The NUMEC affair has been of intense public interest since the first press accounts of massive NUMEC uranium losses were reported by the *New York Times* on September 17, 1966. A lingering question is whether the ramshackle NUMEC facilities and operations that polluted the Kiski Valley, currently requiring a U.S. Army

<sup>1</sup> McTierman, Tom "Inquiry into the Testimony of the Executive Director for Operations" Volume III, Interviews, February 1978. The CIA's Carl Duckett briefed NRC commissioners in 1976. In 1978, Tom McTierman of NRC investigated the 1977 Congressional testimony of NRC's Executive Director for Operations Lee Gossick to see if Gossick lied to Congress about whether officials thought there was evidence of a diversion. The 1978 report of McTierman's investigation contains recollections by NRC people who attended the Duckett briefing in 1976. There is also a four page summary of an interview with Duckett. Nearly all of what Duckett said or what others recalled he said was redacted from the public version of McTierman's report that was eventually released to the public. However, one page (number 3) of the four pages summarizing Duckett's interview summary was inadvertently released to the Natural Resources Defense Council when the report was first made public.

2013  
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Corps of Engineers cleanup costing up to half a billion taxpayer dollars, were the result of its core mission as a budget smuggling operation. Many such operations were established across the United States in the 1940s to illegally obtain and smuggle conventional weapons. One key figure in the NUMEC scheme, David Lowenthal, was just such a smuggler for Israel. Even in 2013, civil suits over accidental death and injury compensation continue to be filed in Pennsylvania district courts by victims of NUMEC. However, aside from the public remarks of Carl Duckett and John Hadden affirming an illegal diversion, the CIA has never fully divulged its findings about NUMEC to the American public.

It is now known that the CIA generated a vast amount of data about NUMEC which could reveal a great deal about the functions of government and fill important gaps in the historical record—which is the primary purpose of the Freedom of Information Act. According to a Carter Administration memo obtained from the National Archives this year dated April 25, 1979, the Internal Security Section of the Justice Department completed a review of "thousands of CIA documents" about the NUMEC diversion. (Attached). Although Congress was to have received the review to take warranted action, apparently such an accountability moment never occurred.

According to a previously released October 6, 1978 memo from John H. Stein, Acting Deputy Director for Operations which accompanied the August 28, 2013 FOIA denial to us, the CIA believed intelligence sources and methods might have been compromised if CIA material submitted for a 1978 GAO report<sup>2</sup> were combined with information already in the public domain. Further, the CIA felt it could not declassify their report "because of the need to have a coordinated Executive Branch position and our desire to protect a sensitive and valuable liaison equity."

The Executive branch is demonstrably reticent to release classified files about Israel's nuclear weapons arsenal in observance of the Nixon-Kissinger Meir policy of "strategic ambiguity." However, no educated person inside or outside the Middle East any longer believes Israel doesn't have a nuclear arsenal. There is an abundance of public domain information about clandestine nuclear weapons funding through nonprofit corporations, yellowcake and technology transfers that helped build the arsenal—often against the wishes of the countries from which such resources were extracted. Perhaps the Stein memo is saying that the U.S. was once so reliant on Israel as an intelligence liaison it would have been counter-productive to let the public know that Israel's agents stole sensitive military material. However, the Cold War is now over. Furthermore, the Obama administration's 2009 executive order on Freedom of Information calls for a new "presumption" of openness, and prohibits retaining material for decades that is "embarrassing" or casts a harsh light on decisions made under such circumstances. Exempting 30+ year-old records under (b)(1) contradicts Obama guidelines that "nothing should remain classified forever" and new automatic 25-year declassification targets.

As you may know, the ISCAP panel, which has an established record declassifying tightly held intelligence files, is currently reviewing a number of NUMEC-related files for release, including the 1978 GAO report. CIA is no longer the sole decision point for release of sensitive records about NUMEC. We believe it would be best for compliance with the spirit of FOIA, the reputation of the CIA, and the benefit of the American public, if all of the CIA's NUMEC-related material were released immediately.

Sincerely,



Grant F. Smith  
Director of Research

Attachments.

---

<sup>2</sup> *Nuclear Diversion in the US? 13 Years of Contradiction and Confusion*, GAO, partially declassified and released in 2010

# EXHIBIT E

Central Intelligence Agency



Washington, D.C. 20505

28 March 2014

Mr. Grant F. Smith  
Director of Research  
Institute for Research: Middle Eastern Policy  
Calvert Station  
P.O. Box 32041  
Washington, DC 20007

Reference: F-2010-01210

Dear Mr. Smith:

This responds to your 19 September 2013 letter appealing our 28 August 2013 final response to your Freedom of Information Act request for records relating to uranium diversion from the Nuclear Materials and Equipment Corporation (NUMEC) to Israel.

The Agency Release Panel (ARP) considered your appeal and determined the material denied in its entirety is currently and properly classified and must continue to be protected from release on the basis of FOIA exemptions (b)(1) and (b)(3). Exemption (b)(3) pertains to information exempt from disclosure by statute. The relevant statute is the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g, as amended, Section 6, which exempts from the disclosure requirement information pertaining to the organization and functions, including those related to the protection of intelligence sources and methods.

Therefore, in accordance with Agency regulations set forth in part 1900 of title 32 of the Code of Federal Regulations, the ARP denied your appeal on the basis of FOIA exemptions (b)(1) and (b)(3). In accordance with the provisions of the FOIA, you have the right to seek judicial review of this determination in a United States district court. Alternatively, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and federal agencies. Using services offered by OGIS does not affect your right to pursue litigation. For more information, including how to contact OGIS, please consult its website, <http://ogis/archives.gov>.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Meeks".

Michele Meeks  
Executive Secretary  
Agency Release Panel

# EXHIBIT F

**GRANT F. SMITH, PRO SE, v. CIA, C.A. No. 1:15-cv-00224 (TSC)****Central Intelligence Agency Vaughn Index**

Entry No.	CADRE No.	Description of Document and Information Withheld	Date of Doc.	Disposition	No. of Pages	Exemptions Cited
1	C05674839	Internal agency Memorandum for the Record from Theodore Shackley, Associate Deputy Director of Operations, entitled "Briefing of Senator John Glenn, Democrat, Ohio, on the NUMEC Case." Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). This information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	8/06/1977	RIP	10	(b)(1), (b)(3)
2	C05674841	Internal agency Memorandum for the Record from Theodore Shackley, Associate Deputy Director of Operations, entitled "Briefing of Congressman Mike McCormack, Democrat, Washington, on the NUMEC Case." Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). This information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	8/06/1977	RIP	4	(b)(1), (b)(3)
3	C05674848	Internal agency routing slip dated 21 January 1977 attaching three internal agency memoranda. The first memorandum is dated 11 March 1976 and from Carl Duckett, Deputy Director for Science and Technology, to the Director of Central Intelligence and titled "Nuclear Materials and Equipment Corporation (NUMEC)." The second memorandum is dated 9 March 1972 and titled "Possible Diversion of Weapons Grade Nuclear Materials to Israel by Officials of the Nuclear Materials and Equipment Corporation (NUMEC)." The third memorandum is dated 26 July 1976, sent to the Director of Central Intelligence, and titled "The NUMEC Case." In all three memoranda, Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). In all three memoranda, this information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	1/21/1977	RIP	13	(b)(1), (b)(3)

**GRANT F. SMITH, PRO SE, v. CIA, C.A. No. 1:15-cv-00224 (TSC)**  
**Central Intelligence Agency Vaughn Index**

Entry No.	CADRE No.	Description of Document and Information Withheld	Date of Doc.	Disposition	No. of Pages	Exemptions Cited
4	C05674849	Internal agency routing slip dated 20 December 1977 attaching one internal agency memorandum. The memorandum is dated 26 August 1977, from Theodore Shackley, Associate Deputy Director of Operations, and titled "Briefing of Representative Morris K. Udall, Democrat, Arizona on the NUMEC Case." Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). This information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	12/20/1977	RIP	7	(b)(1), (b)(3)
5	C05674851	Letter from George Cary, Legislative Counsel, Office of General Counsel of the CIA, to Senator Daniel Inouye responding to his request for information regarding an alleged diversion of enriched uranium. Exemption (b)(3) applies to certain information that is classified as SECRET pursuant to the CIA Act (protecting names of CIA officers and internal offices).	12/20/1977	RIP	1	(b)(3)
6	C05674852	Letter from Stansfield Turner, Director of the CIA, to Senator Daniel Inouye, responding to his request for information in connection with the alleged NUMEC diversion. Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). This information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	12/22/1977	RIP	4	(b)(1), (b)(3)

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Entry No.	CADRE No.	Description of Document and Information Withheld	Date of Doc.	Disposition	No. of Pages	Exemptions Cited
7	C05674858	Internal agency memorandum from Theodore Shackley, Associate Deputy Director of Operations, to the Deputy Director of Central Intelligence entitled "Proposed Briefing of the FBI on NUMEC Related Nuclear Diversion Information." Attached to the Shackley memorandum is another internal memorandum from Norman Smith entitled "The NUMEC Case." In both memoranda, Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). In both memoranda, this information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	5/03/1977	RIP	5	(b)(1), (b)(3)
8	C06419939	Internal agency memorandum enclosing five attachments, and dated 28 February 1978 from Lyle Miller, Acting Legislative Counsel, Office of General Counsel, to the Director of Central Intelligence entitled "Article by Thomas O'Toole 'CIA Repeats Fears on Missing Uranium' 28 February 1978 Washington Post." The attachments include a Washington Post article dated 28 February 1978 and titled "CIA Repeats Fears on Missing Uranium"; an internal agency memorandum dated 3 February 1978 and titled "Meeting with the NRC"; an internal agency memorandum dated 3 February 1978 and titled "NUMEC: Meeting with the NRC"; an internal agency talking paper dated 2 February 1978; a letter dated 3 February 1978 from the NRC to the CIA listing the attendees at a past meeting. In all of the documents, Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). In all of the documents, this information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	2/28/1978	RIP	14	(b)(1), (b)(3)

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Entry No.	CADRE No.	Description of Document and Information Withheld	Date of Doc.	Disposition	No. of Pages	Exemptions Cited
9	C06419940	Internal agency Memorandum for the Record from Theodore Shackley, Associate Deputy Director of Operations, entitled "The NUMEC Case – Discussion with Staff Members of the House Energy Committee and Mr. Carl Duckett, Retired CIA Employee." Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). This information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	8/03/1977	RIP	13	(b)(1), (b)(3)
10	C06419941	Internal agency document providing background on the AEC's investigation of the alleged NUMEC diversion, and the CIA's congressional briefings of the NUMEC case from 1969 – 1978. Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). This information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	None	RIP	9	(b)(1), (b)(3)
11	C06419942	Internal agency document entitled "Batch No. 2 Identified as from 'CI Staff Files' and Sent to Executive Director of JCAE (George Murphy)." Document summarizes the content of a number of CIA memoranda drafted in 1968, 1969 and 1972. Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). This information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	4/05/1976	RIP	7	(b)(1), (b)(3)
12	C06419943	Internal agency Talking Paper regarding the NUMEC case. Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). This information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	None	RIP	5	(b)(1), (b)(3)

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Entry No.	CADRE No.	Description of Document and Information Withheld	Date of Doc.	Disposition	No. of Pages	Exemptions Cited
13	C06419944	Internal agency Memorandum for the Record from E. H. Knoche entitled "NUMEC." Exemption (b)(1) applies to certain information that is classified as TOP SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). This information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	4/27/1977	RIP	3	(b)(1), (b)(3)
14	C06419945	Three internal agency routing slips, two of which are dated 14 April 1977 and a third dated 26 July 1977. The 26 July 1977 routing slip encloses as attachments five documents: an internal agency memorandum dated 14 April 1977 from Theodore Shackley, Associate Deputy Director of Operations, to the Deputy Director for Central Intelligence entitled "The NUMEC Case and ERDA's Paper"; an internal agency memorandum dated 12 April 1977 entitled "Review of ERDA Documents on NUMEC"; an internal agency talking paper; a memorandum dated 8 September 1969 from CIA Director Richard Helms to the President of the United States; a memorandum dated 14 August 1974 from CIA Director William E. Colby to the President of the United States. In all of the documents, Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). In all of the documents, this information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	4/14/1977	RIP	20	(b)(1), (b)(3)
15	C06419946	Internal agency document entitled "Second Collection of Documents Sent JCAE Executive Director George Murphy. This Collection Sent 5 April 1976." Document summarizes the content of a number of CIA memoranda drafted in 1968, 1969 and 1972. Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). This information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	None	RIP	7	(b)(1), (b)(3)

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Entry No.	CADRE No.	Description of Document and Information Withheld	Date of Doc.	Disposition	No. of Pages	Exemptions Cited
16	C06420107	Internal agency document dated 6 June 1977 prepared for the Deputy Director of the CIA entitled "Note for: DDCI, Subject: NUMEC." The document has an attachment, which is an internal agency memorandum dated 11 May 1977 from Theodore Shackley, Associate Deputy Director of Operations, to the Deputy Director of Central Intelligence entitled "Proposed Briefing of the FBI on NUMEC Related Nuclear Diversion Information." In both documents, Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). In both documents, this information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	6/06/1977	RIP	8	(b)(1), (b)(3)
17	C05674863	Internal agency Talking Paper regarding the NUMEC case. Exemption (b)(1) applies to certain information that is classified as SECRET pursuant to 1.4(c) of Executive Order 13526 (specific collection methods). This information is also protected under Exemption (b)(3) (National Security Act and CIA Act). Additionally, the CIA Act was asserted to protect names of CIA officers and internal offices.	None	DIF	2	(b)(1), (b)(3)

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

GRANT F. SMITH, *PRO SE* )  
 )  
 Plaintiff, )  
 v. ) Civil No. 1:15-cv-00224 (TSC)  
 )  
 CENTRAL INTELLIGENCE AGENCY, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

**[PROPOSED] ORDER GRANTING  
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Upon consideration of Defendant’s Motion for Summary Judgment, and good cause  
having been shown, it is hereby

ORDERED that Defendant’s Motion for Summary Judgment is GRANTED.

DATED:

\_\_\_\_\_  
TANYA S. CHUTKAN  
United States District Judge