

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GRANT F. SMITH

Plaintiff,

v.

Civil No. 1:15-cv-01431 (TSC)

CENTRAL INTELLIGENCE AGENCY

Defendant.

**MEMORANDUM IN SUPPORT OF 1<sup>st</sup> AMENDED COMPLAINT**

Plaintiff Grant F. Smith respectfully submits the following information pertaining to his motion to amend the complaint. Under the Federal Rules of Civil Procedure, "...a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."

Plaintiff sought Defendant's consent. The CIA opposes the motion to amend the complaint. He seeks this court's approval, because justice so requires.

The central question to be resolved, before all others may even be properly addressed, is whether the CIA's assertion that it may properly issue a GLOMAR response to Plaintiff's FOIA request is valid, based on repeated CIA claims it is only one member of the intelligence community, and that any of 17-member agencies could be involved in providing the "unprecedented" intelligence support to Israel revealed by President Obama. "CIA first asserted that there are multiple intelligence agencies that provide intelligence support abroad, and that President Obama's statement about American intelligence support generally cannot be read to confirm (or deny) that he was referring to the CIA specifically. "(ECF No. 18-1).

The CIA now moves yet again for summary judgment on the specific basis that it “does not create, obtain, access, or retain under its control the budget line items of other intelligence agencies,” page 5. ECF 26-1. Yet, logically, at least one intelligence agency must be providing “unprecedented” intelligence support to Israel.

It would be manifestly unfair to the Plaintiff, and his public accountability constituency, if this case were to be dismissed after the CIA simply added 16 shells to the thimblery, but declared “game over” before any of the walnut shells was ever lifted to reveal which contained the pea.

If all the other members of the intelligence community deny that they have budget line items pertaining to support to Israel, the CIA may not issue a GLOMAR response. By sheer process of elimination, CIA would be the only logical (as it always had been) point of delivery for “unprecedented” aid to Israel, as the only possible remaining member of the intelligence community left, and therefore certainly the primary node for providing “unprecedented” intelligence aid, as referenced by President Obama, and could no longer hide behind the GLOMAR assertion.

Because the CIA’s evasions made it impossible to proceed otherwise, Plaintiff filed the same Freedom of Information Act request it filed with Defendant in 2015 with the members of the intelligence community the CIA referenced as being possibly involved in providing US intelligence aid to Israel. All intelligence community agencies, except for the NSA, DIA and the ODNI, forthrightly indicated that they possessed no responsive records.

The National Security Agency issued a GLOMAR response on June 5, 2017. Plaintiff appealed this response, and on September 12, 2017, NSA denied Plaintiff’s appeal, making the NSA FOIA ripe for litigation, or in this case, addition to this action as co-Defendant.

The Office of the Director of National Intelligence also issued a GLOMAR response on June 2, 2017, which the Plaintiff appealed on July 29. ODNI has issued no further timely response and the FOIA is ripe for litigation, or in this case addition to this action as co-Defendant.

The Defense Intelligence Agency has placed Plaintiff's FOIA request into a processing track, alongside yet another Plaintiff FOIA that was filed in 2011 and that has only advanced to 75<sup>th</sup> place since 2011. The "unprecedented" intelligence aid to Israel budget request will unquestionably take many, many years before it would even be considered, making the FOIA ripe for litigation, or in this case, addition to this action as co-Defendant.

It is Plaintiff's contention that this action is not ripe for summary judgement or even addressing Defendant's subordinate claims—all of which Plaintiff disputes, and none of which Plaintiff concedes—about the meaning of President Obama's stunning and unprecedented public announcement of the incredible magnitude of secret intelligence aid to Israel before a bona fide response is forthcoming on whether the other members of the intelligence community the CIA has indicated could be providing intelligence aid to Israel have made their own final declarations on the matter to this court.

Plaintiff thus petitions this Court to allow Plaintiff to file a First Amended Complaint adding the National Security Agency, Defense Intelligence Agency, and Office of the Director of National Intelligence as co-defendants.

If the court insists that FOIA responses from any of the CIA's referenced members of the intelligence community are irrelevant and/or denies the motion to amend, Plaintiff requests another two months to address the other issues in the Defendant's 2<sup>nd</sup> request for summary judgement. Plaintiff gently reminds the court that it has granted such consideration in his other

FOIA cases to Defendants, even when Defendants filed them after court-established deadlines had expired, while he has never asked for additional time.

Respectfully submitted,



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Grant F. Smith, PRO SE  
IRmep  
P.O. Box 32041  
Washington, D.C. 20007

For process service:

Grant F. Smith c/o IRmep  
1100 H St. NW Suite 840  
Washington, D.C. 20005

(202) 342-7325

Date: December 1, 2017