

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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GRANT F. SMITH, <i>PRO SE</i>)	
)	
)	
<i>Plaintiff,</i>)	
vs.)	
)	
)	
UNITED STATES OF AMERICA; et al.)	Case: 1:18-cv-00777
)	
)	
<i>Defendants.</i>)	
)	
_____)	

**PLAINTIFF’S STATEMENT OF MATERIAL FACTS NOT IN DISPUTE AND
RESPONSE TO DEFENDANT’S STATEMENT OF FACTS NOT IN DISPUTE**

Pursuant to Local Rule 7(h) of the Rules of the United States District Court for the District of Columbia, Plaintiff hereby submits the following statement of material facts as to which Plaintiff contends there is no genuine issue in connection with its cross-motion for summary judgment, and Plaintiff’s response to Defendant’s statement of material facts.
(ECF 14-1)

1. Plaintiff agrees that the matters set forth in 1-4 of Defendant’s statement of material facts are not in dispute.
2. Plaintiff disputes Defendant’s assertion set forth in 5 that “DOS did not

receive a FOIA request from Plaintiff for the document at issue in this litigation.”

3. Plaintiff had no prior independent basis for knowing about any consultation between Defendants DOE and DOS taking place specifically on March 20, 2015 or any assignment of control number (P-2015-07312) asserted in 7 because Plaintiff was never made aware of such during the FOIA administrative process, and particularly the August 20, 2015 release letter. Had the Plaintiff been notified of the March 20, 2015 consultation and independent DOS control number as required by *DOJ FOIA Referral Guidance*, he could have made a timelier separate FOIA to DOS referencing the DOS control number, in addition to DOE using DOE’s control number in an appeal. Plaintiff therefore neither confirms that the meeting and control number assignment took place, nor disputes that it took place.
4. Plaintiff disputes Defendant’s assertion set forth in 8. According to the Stein declaration there was a DOS withholding of a single sentence, rather than “withholdings.”
5. Plaintiff agrees that the matters set forth in 10 of Defendant’s statement of material facts are not in dispute.
6. Plaintiff disputes that the matter as set forth in 11 of Defendant’s statement of material facts are not in dispute. Plaintiff submitted his FOIA appeal by email on August 25, 2015, not “by letter dated August 25, 2015.” Plaintiff otherwise

agrees that the matters set forth in 11 of Defendant's statement of material facts are not in dispute.

7. Plaintiff agrees that the matters set forth in 12 of Defendant's statement of material facts are not in dispute, but incomplete. Plaintiff clarifies that despite outlining evidence that WNP-136 was being improperly used primarily to "conceal wrongdoing" which is prohibited under EO 13526 in Plaintiff's original FOIA and FOIA appeal, neither the Defendant release nor appeal denial ever addressed these overarching concerns, thereby necessitating this litigation.
8. Plaintiff submits that 13-21 of Defendant's statement of material facts are legal conclusions and in dispute in this case.
9. WNP-136 is titled "Guidance on Release of Information Relating to the Potential for an Israeli Nuclear Capability."
10. The purpose of WNP-136 is to prevent federal agency employees and contractors from making statements, publishing articles or releasing U.S. government information about Israel's nuclear weapons program and arsenal.
11. WNP-136 secrecy mandates are self-applied withhold the contents of WNP-136. It is "self-classifying."
12. The genesis of WNP-136 has nothing to do with U.S. national security or law enforcement. Rather, it is an attempt to improperly facilitate U.S. foreign aid

provisions in the Arms Export Control Act, by suppressing enforcement sections of the Arms Export Control Act.

13. The primary purpose of WNP-136 is to thwart application of the Symington and Glen Amendments to the Arms Export Control Act which condition U.S. foreign aid flows to non-signatories to all Nuclear Non-Proliferation Treaty countries which engage in nuclear weapons technology transfers, such as India, Pakistan and Israel.
14. FOIA Exemption 1 may not be applied to withhold the contents of WNP-136 because the U.S. Government has already officially and authoritatively disclosed that Israel is a nuclear weapon state many times over the course of decades.
15. FOIA Exemption 1 may not be applied to the contents of WNP-136 because the classification guide from which it originates does not support classifying information already in the public domain.
16. Defendants may not apply Exemption 1 or 7(E) to withhold the contents of WNP-136 because WNP-136's primary purpose is to conceal violations of law, inefficiency, administrative error and to prevent embarrassment. in violation of Exec. Order No. 13526, § 1.7(1)-(2).

Dated: August 16, 2018

Respectfully submitted,



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