

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
GRANT F. SMITH,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No. 1:18-cv-02048-TSC
)	
U.S. NATIONAL ARCHIVES AND)	
RECORDS ADMINISTRATION)	
)	
<i>Defendant.</i>)	
_____)	

DEFENDANT’S STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE

Pursuant to Local Civil Rule 7(h), Defendant respectfully submits this Statement of Material Facts Not in Genuine Dispute in support of Defendant’s Motion for Summary Judgment.

1. On July 29, 2018, Plaintiff Grant Smith submitted two FOIA requests to two components of the National Archives and Records Administration (NARA), the William J. Clinton Presidential Library and the George W. Bush Presidential Library. Laster Decl. ¶ 11.
 - a. The first request sought, from the Clinton Library, “an unredacted copy of a President Clinton letter . . . likely addressed to the Prime Minister of Israel, 1-2 pages and written in September or October (or possibly a few months earlier) of 1998.” Laster Decl. Ex. A at 1. Plaintiff’s FOIA request further described the letter as “promising not to pressure the Israeli government into

signing the Treaty on the Proliferation of Nuclear Weapon (NPT) or discuss Israel’s nuclear weapons program.” *Id.*

- b. The second request sought, from the Bush Library, “an unredacted copy of a President George W. Bush letter . . . likely addressed to the Prime Minister of Israel, 1-2 pages and written at the very beginning of the first term.” Laster Decl. Ex. B at 1. Plaintiff’s FOIA request further described the letter as “promising not to pressure the Israeli government into signing the Treaty on the Proliferation of Nuclear Weapon (NPT) or discuss Israel’s nuclear weapons program.” *Id.*

2. The libraries responded to each letter with a so-called *Glomar* response. Laster Decl. ¶¶ 12-13, 18-20.

- a. On July 5, 2018, the Clinton Library responded to Plaintiff’s request by explaining that it “can neither confirm nor deny the existence or nonexistence of any records that may be responsive to” Plaintiff’s request because “[t]he fact of the existence or nonexistence of records containing such information, unless of course the subject has been officially acknowledged, would be classified for reasons of national security.” Laster Decl. Ex. C.
- b. On July 6, 2018, the Bush Library responded to Plaintiff’s request by explaining that it “can neither confirm nor deny the existence or nonexistence of any records that may be responsive to” Plaintiff’s request because “[t]he fact of the existence or nonexistence of records containing such information,

unless of course the subject has been officially acknowledged, would be classified for reasons of national security.” Laster Decl. Ex. D.

3. Both requests were for Presidential records. *See* Laster Decl. Ex. A (seeking purported letter from President Clinton); Laster Decl. Ex. B (seeking purported letter from President Bush).
4. President Bush specified a restricted access period of 12 years with respect to each category of information identified in the Presidential Records Act, 44 U.S.C. § 2204(a). Laster Decl. ¶ 13. That period expires in January, 2021. *Id.*
5. The fact of the existence or nonexistence of the requested records is authorized to be classified by Executive Order 13,526. *See* Fitzpatrick Decl. ¶¶ 6-10.
6. The fact of the existence or nonexistence of the requested records is in fact properly classified pursuant to Executive Order 13,526. *See* Fitzpatrick Decl. ¶¶ 6-10, 12.
 - a. John Fitzpatrick is an original classification authority. Fitzpatrick Decl. ¶¶ 2, 8.
 - b. The information whether the requested records do or do not exist is information under the control of the United States. Fitzpatrick Decl. ¶ 8.
 - c. The information whether the requested records do or do not exist pertains to the foreign relations of the United States. Fitzpatrick Decl. ¶ 9.
 - d. The information whether the requested records do or do not exist pertains to information provided to the United States by a foreign government. Fitzpatrick Decl. ¶ 9.

- e. An original classification authority determined that unauthorized disclosure of the fact whether or not the requested records exist could reasonably be expected to result in damage to the national security. Fitzpatrick Decl. ¶¶ 8, 10.
 - f. That original classification authority has described the damage to national security that is reasonably likely to occur. *See* Fitzpatrick Decl. ¶ 10.
7. The information whether the requested records do or do not exist was not classified for an impermissible purpose. Fitzpatrick Decl. ¶ 12.
8. The information whether the requested records do or do not exist was not previously officially disclosed to the public. *See* Adam Entous, *How Trump and Three Other U.S. Presidents Protected Israel's Worst-Kept Secret: Its Nuclear Arsenal*, THE NEW YORKER (June 18, 2018), <https://www.newyorker.com/news/news-desk/how-trump-and-three-other-us-presidents-protected-israels-worst-kept-secret-its-nuclear-arsenal>.

Dated: December 20, 2018

Respectfully submitted,

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