

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

HAROLD WEISBERG)
)
 Plaintiff,)
)
 v.) Civil Action No. 77-1997
)
 CENTRAL INTELLIGENCE AGENCY, et al.,)
)
 Defendants.)

AFFIDAVIT OF ROY R. BANNER

State of Maryland)
) ss:
 County of Anne Arundel)

Roy R. Banner, being duly sworn, deposes and says:

1. I am the Chief, Policy Staff, of the National Security Agency (NSA). As Chief, Policy Staff, I am responsible for processing all initial requests made pursuant to the Freedom of Information Act (FOIA) for NSA records. I have read and am familiar with the allegations contained in the amended complaint in this case. The statements herein are based upon knowledge, upon my personal review of information available to me in my official capacity, and upon conclusions reached in accordance therewith.

2. The National Security Agency was established by Presidential Directive in October 1952 as a separately organized Agency within the Department of Defense under the direction, authority, and control of the Secretary of Defense, who was designated by the President as Executive Agent of the Government for conducting the communications security activities and signals intelligence activities of the United States.

3. On November 3, 1977, the Central Intelligence Agency (CIA) forwarded to NSA twenty-two documents originated by NSA

that had been located by the CIA in connection with an appeal from that agency's response to a request on June 11, 1976 by Mr. Weisberg's attorney on his behalf for records pertaining to Dr. Martin Luther King, Jr., records pertaining to the assassination of Dr. King or to James Earl Ray or any alleged or suspected accomplice or associate in the assassination, collections of published materials on the assassination or records pertaining to such published materials. On November 22, 1977, the Chief, Policy Staff, NSA, advised plaintiff's attorney that the NSA records located by the CIA must be withheld from release to plaintiff because they are exempt from release pursuant to 5 U.S.C. §552(b)(1) and 5 U.S.C. §552(b)(3). (A copy of this letter is attached to plaintiff's amended complaint as Exhibit 8.)

4. The NSA records located by the CIA, withheld from release by NSA, and sought in this civil action were acquired in the course of conducting lawful signals intelligence activities. A primary signals intelligence mission of NSA is to intercept radio communications sent to or from foreign governments in order to obtain foreign intelligence information necessary to the national defense, national security, or the conduct of foreign affairs.

5. It is common knowledge that the total volume of radio signals transmitted into the atmosphere and to the ionosphere on a given day is vast. It is also generally known that radio transmissions via the atmosphere and the ionosphere can be received by anyone operating the proper receiving equipment in the right place at the right time. Thus, the fact that NSA can intercept radio communications is generally known. It is also presumably known to foreign officials that such interception of radio communications is a primary mission of NSA. It is common knowledge, too, that the interception and processing of all of

the vast numbers of communications that are transmitted is beyond the realm of possibility for NSA or for any other communications intelligence activity. What is not generally known and must be protected from disclosure is information about what is possible for NSA to accomplish and what, within that realm of possibility, are NSA's actual intelligence targets. Foreign governments using international common carrier facilities for their communications do not know which of the carriers' routes are capable of being intercepted by NSA. Further, they do not know from which of these routes communications have been and may still be intercepted, processed and exploited by NSA to produce intelligence information. Were they to be made aware that the communications they send on particular routes may be intercepted, yield to processing techniques, and supply useful intelligence, they would probably be induced to take measures feasible for them to secure their communications in some way -- by using other facilities or by initiating or upgrading cryptography.

6. The intelligence collection mission of NSA can be only as successful as the protection of the Agency's sensitive and fragile sources of communications intelligence information. Revelations of records or portions thereof confirming the identity of governments, organizations, or individuals whose foreign communications were acquired by NSA, disclosing the dates or contents of such communications, or divulging the methods and techniques by which the communications were acquired by NSA, would severely jeopardize the intelligence collection mission of NSA. A trained foreign intelligence observer using highly sophisticated techniques, could draw inferences from such revelations about the sources, methods and capabilities of NSA. Any increase in the store of information available to such an observer would jeopardize the intelligence collection mission of NSA by

identifying present intelligence collection and analysis capabilities, thus permitting countermeasures to be taken to deny to NSA its sources or to frustrate its analytic capability.

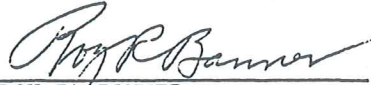
7. The twenty-two NSA records located by the CIA in response to plaintiff's request and denied by the NSA and sought in this civil action are classified in their entirety to protect intelligence sources and methods. Each portion of each record when originated was classified SECRET or TOP SECRET in accordance with established classification categories (E.O. 10501, Section 1), is appropriately marked and is exempt from automatic declassification or downgrading (E.O. 10501, Section 4(a)(1), as amended; E.O. 11652, Section 5(B)). Pursuant to NSA regulation, I am responsible for applying the SECRET and TOP SECRET classification authority delegated to the Director, NSA, in accordance with classification principles and guidelines established by the Director, NSA. I am also responsible for reviewing classified documents for possible declassification. I personally reviewed today each of these records and each portion thereof being withheld from the plaintiff and determined that each continues to require classification pursuant to E.O. 11652, Section 1, because of the damage its unauthorized disclosure would reasonably be expected to cause to communications intelligence activities of the United States Government. Each record was marked with its appropriate classification when it was originated and has continued to be so marked. I, therefore, determined that the records are exempt under 5 U.S.C. 552(b)(1) from release under the Freedom of Information Act.

8. The release of any record or portion thereof located in response to plaintiff's request and denied by the NSA and sought in this civil action would disclose information about the

nature of NSA's communications intelligence activities and functions which is protected from disclosure by Section 6 of Public Law 86-36. The disclosure of these classified records or of specific information about them would reveal information concerning communications intelligence activities of the United States Government and the manner in which communications intelligence is obtained. These records are protected in their entirety by 18 U.S.C. 798 (a) (3) and (4) prohibiting the unauthorized disclosure of classified information concerning the communications intelligence activities of the United States or obtained by the processes of communications intelligence from the communications of foreign governments. Because these records would reveal communications collection and analysis capabilities, the disclosure of any portion of them would compromise classified information pertaining to intelligence sources and methods protected from disclosure by section 103 (d) (3) of the National Security Act of 1947 (50 U.S.C. 403 (d) (3)). Accordingly, I determined that the reports are exempt under 5 U.S.C. 552 (b) (3) from release under the Freedom of Information Act because each portion of each record is protected from disclosure by Section 6 of Public Law 86-36, by 18 U.S.C. 798, and by Section 102 (d) (3) of the National Security Act of 1947.

9. In view of the specific and unique circumstances relating to the documents in question, I can disclose that the number of documents involved is twenty-two. I cannot provide additional information regarding the withheld material without revealing information which itself requires protection for the same reasons as the documents themselves require protection. It is not possible to describe the material in and reveal the dates of the documents held by NSA without enabling a knowledgeable person to determine the nature of the documents in the context of the

Agency's mission, thus disclosing intelligence sources and methods. In short, any further factual public description of the material would compromise the secret nature of the information and would compromise intelligence sources and methods.



ROY R. BANNER
Chief, Policy Staff
National Security Agency

Subscribed and sworn before me
this 16th day of May 1978.


NOTARY PUBLIC

My commission expires July 1978.