

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY,
et al.,

Defendants.

Civil Action No. 77-1997

AFFIDAVIT

Charles E. Savige, being first duly sworn deposes and says:

1. I am the Deputy to the Information and Privacy Coordinator of the Central Intelligence Agency (CIA) and my duties involve the supervision of searches of CIA records in response to requests under the Freedom of Information Act (FOIA) and the maintenance of records related to FOIA requests. I have occupied this position since January 1975 and have held various executive positions with the CIA since 1954. The statements made herein are based upon my knowledge, upon information made available to me in my official capacity and upon conclusions reached in accordance therewith.

2. This affidavit supplements, and hereby incorporates, the affidavit of Mr. Gene F. Wilson, Information and Privacy Coordinator of the CIA, dated 26 May 1978, and filed in the above-captioned litigation. All FOIA requests and related correspondence received by CIA are handled initially in the Office of the Information and Privacy Coordinator, hereinafter referred to as the Coordinator. The appropriate number of copies of the incoming requests are made and forwarded to components known to the Coor-

dinator to be custodians of records systems which contain records conceivably responsive to the FOIA request. The results of the search and review in those components are evident in the affidavits already filed in the above-captioned litigation.

3. CIA records systems are varied. The record storage, processing and retrieval systems are designed and programmed to respond to the intelligence responsibilities of the component employing the system. Since the intelligence responsibilities of the various components differ, the records systems differ. Many such systems are unique to the intelligence activity they are a part of. The records systems are frequently such an integral part of the related intelligence activity that the records system necessarily bears the same classification as the intelligence activity. Discussing such systems in any meaningful detail would be tantamount to a detailed discussion of the intelligence activity involved. Most of the systems, outside of those mentioned in Mr. Gambino's supplementary affidavit, are classified and a detailed discussion would entail the disclosure of classified information, as well as information concerning intelligence sources and methods. Despite the limitations thus imposed on a discussion of such systems, some assurances can be provided.

4. In each component, FOIA searches are routinely made among all of the indices that might logically relate to the substance of the FOIA request. The techniques in the search are the same used for any search request; whether the request originates with the National Security Council, the Director of Central Intelligence, an intelligence analyst or a FOIA requester seeking information from a records system. First, all available indices are reviewed to discover references to possibly responsive records. The records are then retrieved and reviewed. Records

determined to be responsive are then reviewed to determine their releasability. This latter step is the first action that distinguishes a FOIA search from most other official searches of CIA records. The preceding actions are the same in all routine searches of such records.

5. Plaintiff's expressed concern about the completeness of the CIA records search is not well founded. Based upon knowledge available to me in my official capacity, I believe all identifiable records have been retrieved from those CIA records systems that could conceivably contain responsive documents. The only likely way to improve upon the search would be to undertake a page-by-page review of all records in CIA. Such a search would obviously be enormously time consuming and expensive, and beyond the scope of the intent of the FOIA. It is also unlikely that such a search would produce many, if any, additional documents responsive to the present FOIA request.

6. The commencement of the searches was initially delayed, as indicated earlier, while the components prepared estimates of the expected cost for search and copying. Such estimates are customarily prepared when there is a reasonable expectation of significant costs. In such circumstances, requesters are asked to make a good-faith deposit against anticipated costs before the request is processed. Additional delays resulted from the existing backlog of other FOIA and Privacy Act requests. The nature of the CIA problem in handling its growing backlog of such work is spelled out in detail in its annual report to Congress (see CIA Exhibit L attached) and a letter to the Chairman of Senate Select Committee on Intelligence of 5 April 1978 (see CIA Exhibit M attached). Additional time was spent in correspondence with the plaintiff regarding the acquisition of privacy releases

from James Earl Ray and Mrs. Martin Luther King. The purpose in such releases is to avoid violation of the Privacy Act provisions intended to protect the right of privacy of individuals on whom government files contain information susceptible to release to third parties under the FOIA. This practice serves several purposes. It puts individuals on notice that government records concerning them may be made available to other parties and it also makes it possible for an agency, such as CIA, to be able to handle FOIA requests more effectively by not having to review such files more than once. The criteria concerning what kinds of information may be exempted from release under the FOIA vary depending upon whether signed releases have been received from people whose personal data may be subject to release to other parties under the FOIA. When such releases are received after a search and review has been completed, additional information usually becomes available to requesters: That probability is large enough so that CIA normally encourages FOIA requesters to get such releases first to enable more efficient processing of requests. In the case of the above-captioned litigation, the Agency postponed some of its review efforts in the expectation that plaintiff would produce the requested releases. Although plaintiff objected to the request, he encouraged the CIA expectation that he would comply by providing one of the requested releases and stating he would get the second (see CIA Exhibit D).

7. Originally the Agency components estimated a total of one thousand dollars (\$1000.00) cost for search and copying fees. The plaintiff was so advised and requested to deposit five hundred dollars (\$500.00) as an advance against that anticipated cost (see CIA Exhibit C). Subsequently, on the basis of plaintiff's request for waiver of costs, plaintiff was advised that search

costs would be waived and only copying fees would be charged (see CIA Exhibit J). Plaintiff was advised of several options available to him regarding the disposition of the five hundred dollar (\$500.00) deposit, including applying it against his current debts to the Agency for documents copied and retrieved under this and other FOIA requests which currently totaled forty-eight dollars and eighty cents (\$48.80) for documents copied and received under this FOIA request and one thousand four hundred thirty-five dollars and seventy cents (\$1,435.70) for documents copied and received in response to other FOIA requests (see CIA Exhibit K). Plaintiff has not yet stated his decision on that matter.

8. Some CIA documents, or portions thereof, are being withheld because they are classified and thus exempt from release pursuant to FOIA exemption (b)(1). It has long been a routine and regular practice in CIA to make necessary classification determinations on documents at the time they were originated. Such documents were normally marked with the appropriate classification stamp after they were typed, before they were signed. None of the current CIA affiants, in this case, can attest from personal knowledge that such was the case with the documents at issue in this case because none of the affiants were present at the origin of the pertinent documents. However, when the documents were retrieved for the instant FOIA request, they had already been appropriately stamped. There is no reason to doubt that they were classified when originated. Most of the documents involved were classified at a time when such matters were governed by Executive Order 10501. The requirement to identify the classifying official on the face of the document was not included in that Executive Order. That requirement did not come into existence until

1 June 1972, when Executive Order 11652 replaced 10501. Those few classified documents in this case, which were originated since the enactment of Executive Order 11652, were marked as required with the identity of the classifying officer shown on the face of the document. It is important to note that the Agency affiants in this case are all authorized to classify CIA documents up through TOP SECRET. Each affiant personally reviewed the documents being withheld, including those withheld on the grounds of classification. Each affiant, after his review, recertified the validity of the classification of the documents, both substantively and procedurally pursuant to Executive Order 11652.

9. Plaintiff's misgivings about the significance of having received the 31 March 1971 memorandum about plaintiff's book, from CIA, in response to an earlier FOIA request but not in response to the current request, are dealt with in Mr. Gambino's affidavit. Mr. Gambino's affidavit deals only with the records of the Office of Security. The other CIA components did not retrieve any Agency records concerned with publications or books about the assassination of Martin Luther King, Jr. No such documents were indexed under the names of Martin Luther King, Jr. and James Earl Ray. No search was made under the names of other authors, which plaintiff now suggests should be done, because plaintiff did not provide the names of any such authors or request documents relating to them. Any books that may be available in the CIA library concerning the assassination of Martin Luther King, Jr. were also not sought out because such books are not considered Agency records. Copying such books would pose a potential copyright act violation. It also seems unlikely that any FOIA requester would be willing or happy to pay the necessary fees which would in most cases exceed the commercial price of such books.

10. Mr. Lesar, on page 2 of his affidavit, refers to CIA document No. 251, a released copy of which is attached as Attachment 2 to said affidavit. Mr. Lesar and plaintiff have apparently mistakenly concluded that the section of the document indicating how many copies of the document were distributed also contained, in the original document, a collection of file designators and that any search should have included those files and the released documents should have included any duplicate copies located. The deleted indicators were in fact sub-components or offices within the Directorate of Operations. Those offices were information recipients of the document and were under no obligation to file, destroy or otherwise dispose of the copies when they received them. If any such copies still exist and were made part of an indexed records system and were retrieved under the current FOIA request, they would not have been reproduced for release if they have been recognized as duplicate copies of a document already so treated. The Agency normally would eliminate redundant copies.

11. Mr. Lesar also alleges on page 2 of his affidavit that material has been released to the plaintiff under the current FOIA request that should have been released to Mr. Lesar under an earlier FOIA request. The only available record of a request by Mr. Lesar for CIA records is one under the Privacy Act in which he requested files relating to himself. There is no record of a request by Mr. Lesar for records concerned with Martin Luther King, Jr. or James Earl Ray. Further check is not possible since the material is not identified.

12. Mr. Wilson's affidavit of 26 May 1978, contained two elements of information that require correction. On page 5 of said affidavit, 64 documents were shown as having been referred

to the Federal Bureau of Investigation. The last of several increments of documents, totaling forty-six (46) documents, became detached from a memorandum of transmittal and consequently did not actually reach the FBI until 10 July 1978. The total number of documents referred does not change, only the date when the final group of documents reached the FBI. Additionally, the same section of the affidavit indicates a number of documents were referred to the Department of State. The figure should be changed from 19 to read 18.

Charles E. Savige
Charles E. Savige

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this 19th day of
July 1978.

Allie Falardeau
Notary Public

My commission expires: 22 November 1981.

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

1 MAR 1978

The Honorable Thomas P. O'Neill
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act during calendar year 1977.

During 1977, 4,843 requests for access to records were logged and put into processing by the Agency, of which 1,252 were submitted under the Freedom of Information Act. An additional 1,190 request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These were, without exception, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) rather than the Freedom of Information Act. A summary of Agency activity including Privacy Act and Executive Order 11652 mandatory classification review requests as well as Freedom of Information requests, is provided in the statistical table below. You will note that the processing backlog increased by 1,138 cases during 1977.

	<u>FOIA</u>	<u>PA</u>	<u>EO</u>
1. Requests carried over from CY 1976	536	598	98
2. Requests logged during CY 1977	<u>1,252</u>	<u>3,023</u>	<u>568</u>
3. Total requests closed during CY 1977	772	2,397	536

EXHIBIT "L"

a. Granted in full	167	195	156
b. Granted in part	241	520	268
c. Denied in full	95	124	101
d. No record available and misc. (e.g., canceled or with- drawn)	269	1,558	11
4. Requests carried over to CY 1978	1,016	1,224	130

In addition to the above, the Agency responded during 1977 to numerous other requests from members of the public for copies of unclassified CIA publications such as maps, reference aids, monographs, and translations of foreign language broadcasts and press items--either directly or by referral to those federal agencies with responsibility for the distribution of such CIA products.

The number of formal requests levied upon the Agency increased by 38.7 percent (1,352 requests) over the previous year. Freedom of Information requests during 1977 showed an increase of 64.5 percent (491) over 1976. In order to handle this workload, manpower equivalent to 109 employees working full-time was assigned to the processing of Freedom of Information and related requests, appeals, and litigation--an increase of some 5.9 percent over the manpower allocation of 1976. Despite our increased efforts, however, the processing backlog grew.

I have explained in previous reports the factors which make the processing of Freedom of Information and similar requests a time-consuming matter for the Agency. These factors include a decentralized filing system, a frequent need for intra- or interagency coordination in the review of records, and the extreme sensitivity of many of our records. Except for those rare instances when Freedom of Information requests happen to duplicate those previously processed, it has been impossible for the Agency to respond within the 10 working days stipulated by the Act, or, for that matter, within the 20 working days permitted by the Act whenever certain conditions are met. We follow a general policy of "first-in, first-processed" in handling requests, and our processing backlog is such that the statutory deadline for responding usually has elapsed prior to our commencing work on requests. The situation in responding to appeals in a timely manner is, if anything, even worse.

There is no other intelligence organization in the world which is under such a broad legal requirement to provide

intelligence information to the general public. Nonetheless, I assure you that the Agency has made, and continues to make, every effort to comply fully with both the letter and spirit of the Freedom of Information Act, consistent with the Director's statutory mandate to protect intelligence sources and methods from unauthorized disclosure. To this end, a sizable commitment of resources has been allocated to the administration of the Act. In my judgment, the Agency cannot divert much additional manpower to the program without impairing its ability to perform basic foreign intelligence missions. Moreover, there is a limit to the number of personnel qualified to review for releasability sensitive intelligence records. Mistakes would be costly. Unless our sources are afforded protection from disclosure, they could lose confidence in our ability to maintain secrets and back off from full collaboration, thereby impairing the Agency's ability to collect the intelligence essential to national survival. In view of these considerations, we urge that the Congress consider amending the Act so that the time constraints are reasonable and that both the volume of records and their possible sensitivity with respect to national security matters are duly taken into account.

I feel obliged to bring to your attention the fact that, although the Act does not directly apply to the Congress, Congressional documents and Congressional information recorded in CIA memoranda, provided to the CIA under clear caveats of confidentiality, are subject to requests. Under the Act, the CIA must acknowledge the existence of such documents and memoranda to the requester; we have, however, respected the confidentiality imposed by the Congress. The Agency is now involved in litigation wherein the plaintiff is seeking disclosure of the Executive Session transcript of the House Committee legislative hearings on the National Security Act of 1947, which established the Central Intelligence Agency.

Respectfully,

/s/ John F. Blake

John F. Blake
Deputy Director
for
Administration

Enclosure

FREEDOM OF INFORMATION ACT
ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1977

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 336
2. Authority relied upon for each such determination:
 - (a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., requests) invoked</u>
(b) (1)	234
(b) (2)	54
(b) (3)	284
(b) (4)	3
(b) (5)	21
(b) (6)	146
(b) (7)	25
(b) (8)	0
(b) (9)	0

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- (b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., requests) invoked</u>
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	284

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- (c) Other authority: None

In 13 instances, requesters appealed on the basis of our failure to respond within the statutory deadline, and initial processing was therefore halted prior to completion. Seven requests were withdrawn by the requesters after processing had commenced. Finally, 83 requests were canceled because of the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee deposits or written assurances that fees would be paid, etc. We do not regard any of the above actions as denials inasmuch as the Agency was prepared to act upon the requests, and they have thus not been included in the 336 figure given in answer to question 1, above.

3. Names and titles of each person who is responsible for the denial of records requested and the number of instances of participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
Bean, Harold G.	Former Assistant for Information, DDA	9
Biddescombe, John	Chief of the Information Review Group, Office of Security	9
Bohrer, Charles A.	Director of Medical Services	1
Brandwein, David S.	Director of Technical Service	8
Briggs, Charles A.	Former DDO Information Review Officer	141
Carpentier, Patrick	Assistant Legislative Counsel	1
Christison, William A.	Deputy Director of Geographic and Cartographic Research	1
Devlin, John F.	Deputy Director of Regional and Political Analysis	5
Dirks, Leslie C.	Deputy Director for Science and Technology	1
Duffy, Edward R.	Former Chief of the Information Review Group, Office of Security	35
Eckman, Philip	Director of Research and Development	2
Eisenbeiss, Harry C.	Director of Central Reference	4
Ernst, Maurice C.	Director of Economic Research	3

Evans, Ben C.	Executive Secretary, Office of the DCI	1
Firth, Noel	Director of the Office of Imagery Analysis	2
Hicks, John L.	Director of the Nation- al Photographic In- terpretation Center	3
Janney, Federick W. M.	Director of Personnel	6
Kane, Charles W.	Former Director of Security	1
Kelly, Thomas E.	Former Chief of the Plans and Resources Staff, Office of Training	1
Kotapish, William R.	Deputy Director of Security for Policy and Management	3
Kovar, Richard D.	Former Deputy Director of Regional and Politi- cal Analysis	1
Lapham, Anthony A.	General Counsel	8
Lehman, Richard	Former Deputy to the DCI for National Intelligence	1
McDonald, James H.	Director of Logistics	2
McDonald, Walter J.	Former Deputy Director of Economic Research	9
Owen, Robert E.	DDO Information Re- view Officer	29
Padgett, Harold E.	Deputy Director of Logistics	1
Page, Eloise R.	Chief of the Policy and Coordination Staff, DDO	3
Peterson, Don H.	Director of the Foreign Broadcast Information Service	4

Rothenburg, Herbert	Deputy Director of Scientific Intelligence	3
Smith, Donald	Deputy Director of Training	1
Stevens, Sayre	Former Deputy Director for Intelligence	1
Thomas, Jack E.	Former Special Assistant to the Deputy to the DCI - Intelligence Community	3
Waggener, Philip A.	Deputy Director of Strategic Research	2
Waller, John H.	Inspector General	1
Weber, Carl	Director of Scientific Intelligence	1
Wells, William	Former Deputy Director for Operations	2
Wilson, Gene F.	Information and Privacy Coordinator	4

It will be noted that the total number of instances of participation amounts to only 313, some 23 less than the number of requests denied in whole or in part. The explanation for this is that a number of requests concerned other agencies' records, referred to the CIA for review. Following the review, these records were returned to the originator, along with the CIA's determinations and recommendations, for the originating agency's response to the requester. Under these circumstances, no CIA denying official was identified inasmuch as the records were denied to the requester by the agency which originated them.

4. Total number of intra-agency appeals from adverse initial decisions made pursuant to subsection (a)(6): 63

The above figure does not include 13 appeals resulting from the Agency's failure to respond within the statutory deadline. In 22 additional cases, requests which were initially processed under the provisions of the Privacy Act were processed under the Freedom of Information Act, upon appeal, in accord with the wishes of the appellants.

- (a) Number of appeals in which, upon review, request for information was granted in full: 1
- (b) Number of appeals in which, upon review, request for information was denied in full: 17
- (c) Number of appeals in which, upon review, request was denied in part: 65

5. Authority relied upon for each such appeal determination:

(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., appeals) invoked</u>
(b) (1)	68
(b) (2)	21
(b) (3)	73
(b) (4)	0
(b) (5)	10
(b) (6)	56
(b) (7)	38
(b) (8)	0
(b) (9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., appeals) invoked</u>
50 U.S.C. 403(d) (3) and/or 50 U.S.C. 403g	73

6. Names and titles of each person who, on appeal, is responsible for the denial in whole or in part of records requested and the number of instances of participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
Blake, John F.	Deputy Director for Administration	20
Dirks, Leslie C.	Deputy Director for Science and Technology	3
Malanick, Michael J.	Former Acting Deputy Director for Administration	19

Murphy, Daniel J.	Former Deputy to the DCI for the Intelligence Community	1
Stevens, Sayre	Deputy Director of the National Foreign Assessment Center	2
Wells, William W.	Former Deputy Director for Operations	75

7. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F); etc.: None

8. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

See Tab A for amendments published in 1977.

9. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

See Tab B for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1977 was \$16,439.

10. A. Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2)(A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

B. Costs:

During calendar year 1977, the Agency expended 192,800 man-hours (the equivalent of approximately 109 man-years) in processing Freedom of Information and related (i.e., Privacy Act and Executive Order 11652) requests, appeals, and litigation. This represents a 5.9 percent increase over the previous year. Calculated on the basis of an average clerical grade of GS-06/Step 3, and an average professional grade of GS-12/Step 5, the total salary expenditures for the year amounted to approximately \$2,161,600. Taking into account fringe benefits such as Government contributions to insurance, hospitalization, and

retirement programs, we estimate the total personnel costs at \$2,377,700. Of this total, approximately \$1,021,250 can be attributed to administration of the Freedom of Information Act.

Such additional costs as office space, equipment rentals, office supplies, EDP support, etc., have not been calculated. It is thought, however, that these expenditures would be relatively minor in comparison with the personnel costs estimated above.

C. Compliance with time limitations for agency determinations:

- (I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were not in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have therefore explained the problem to requesters and appellants and apprised them of their rights under the law.

- (II) Provide the total number of instances where court appeals were taken on the basis of exhaustion of administrative procedures because the agency was unable to comply with the request within the applicable time limits: 13
- (III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time: 1

See Tab C for a copy of the court order.

D. Internal Memoranda:

A copy of HHB 70-1, "Freedom of Information Act, Privacy Act, and Executive Order 11652 Handbook," is enclosed as Tab D.



Washington, D.C. 20503

78-051/14

OLC 78-0629/a

Honorable Birch Bayh, Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

5 APR 80

Dear Mr. Chairman:

During our FY 1979 budget hearings, Chairman Burlison, House Permanent Select Committee on Intelligence, Subcommittee on Program and Budget Authorization, requested and was provided statistical and other data as to the increasingly heavy administrative burden imposed by the Freedom of Information Act (FOIA) and Privacy Act (PA). I considered this matter to be of similar interest to the Members of your Committee and provided herein is the same data for their information.

Requests for access to records are levied upon the CIA pursuant to the above statutes and Sec. 5(C) of Executive Order 11652. Executive Order 11652 has been in effect since 1 June 1972, but the request volume did not become a problem until 1975, when the Privacy Act of 1974 and the 1974 amendments to the Freedom of Information Act took effect. The table below sets forth the number of requests received, by category, from 1 January 1975 through 31 December 1977. The figures given include only those requests actually accepted for processing. An additional 3,997 requests, principally requests for access to personal records, were received during this period but never processed because of the failure of the requester to provide the information needed to establish his identity beyond doubt or to provide a more precise description of the records sought. Though never fully processed, each of these unlogged requests has required, at the minimum, the establishment of a case file and at least one letter of response, thereby adding to our workload.

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>Totals</u>
FOIA requests	6,609	761	1,252	8,622
PA requests	552	2,356	3,023	5,931
EO requests	<u>232</u>	<u>374</u>	<u>568</u>	<u>1,505</u>
Totals	7,393	3,491	4,843	16,058

EXHIBIT "M"

The processing backlog at the close of 1977 amounted to 2,370 initial requests and 260 administrative appeals of initial denials. In addition, 95 cases had gone into litigation and most of these suits were still open as of the end of 1977. This Agency is currently receiving an average of 96 new requests per week, of which 41 percent are submitted under the Freedom of Information Act and 52 percent under the Privacy Act, with the remainder being Executive Order requests. As of 22 March 1978, the processing backlog of initial requests had grown to 2,736 cases and the appeals backlog amounted to 289 cases.

During 1977, the Agency expended 192,800 man-hours (the equivalent of approximately 109 man-years) in processing requests, appeals, and litigation. We estimate the salary expenditure at \$2,161,000. The total personnel costs, including benefits, come to approximately \$2,377,700, of which \$1,021,250 can be attributed to administration of the Freedom of Information Act. There are other costs, such as office space, supplies, equipment rentals, and computer support, which we have not attempted to calculate, but these would be minor in comparison with our personnel costs. Inasmuch as we are currently devoting the equivalent of 113 full-time employees to the processing of FOIA, PA, and Executive Order requests, appeals, and any resultant litigation, we anticipate even higher expenditures for 1978. The cost of administering these programs must be absorbed by the Agency within overall operating funds.

Certain fees are assessed for services provided under the Freedom of Information Act (no charge is made for PA searches, and most of our Executive Order requests are referrals from other Federal agencies, for which we collect no fees). We collected, however, only \$16,439 during 1977 to offset the costs of administering these programs. Under the Freedom of Information Act, we are authorized to levy charges only for copying costs and for the time spent in locating relevant documents. No fees may be charged for the far more time-consuming and costly process of reviewing and sanitizing documents to ensure the protection of information which is properly classified or which concerns sensitive intelligence sources and methods. Until such time that the fee structure takes into account actual processing costs, we are unlikely to see any significant drop in the number of requests and large amounts of the taxpayers' money will continue to be spent reviewing and sanitizing material for release to a relatively small number of individuals.

In the meantime, the fee structure which we do have affords some protection against capricious "fishing expeditions" and omnibus-type queries which would be extremely costly to process. From 1 January 1977 through 8 March 1978, for example, 67 FOIA cases were canceled or withdrawn because of the refusal of requesters to agree to the payment of reasonable search and copying fees. Although

not large, the number provides some indication that fees cause requesters to exercise restraint in pursuing their informational needs. Moreover, we must assume that many others are deterred from submitting requests because they are aware that fees may be charged. We estimate that if our current authorization to charge fees were to be drastically limited through judicial interpretation or legislative amendment of the Act, the volume of requests would double. We do, of course, waive fees, in whole or in part, when the subject matter sought is clearly public interest and its release would benefit the general public. It is not our policy, however, to automatically waive fees whenever the requester states his intention to publish the results of his research.

The Freedom of Information Act, as you are aware, also provides statutory deadlines of 10 working days and 20 working days for responding to requests and appeals, respectively. Unless requests happen to duplicate those previously processed, it has been impossible for the CIA to answer requests or appeals within these time frames. A number of factors, some of which are perhaps unique to this Agency, have contributed to this, including the following considerations:

1. The heavy volume of requests received in 1975, in the wake of the publicity given to questionable domestic activities in the past by the Agency, resulted in processing backlogs which still persist and are, in fact, still growing. In an effort to be fair to all, requests, unless exceptional circumstances dictate otherwise, are handled on a "first-come, first-served" basis. Generally speaking, the statutory time for responding elapses before we can even commence searching for the records requested.
2. Because of the specialized missions of various Agency components and the security requirement for compartmentalization, the CIA, unlike many other agencies, has no central file or index to its recordholdings. A search for "all" information on a given topic or topics may therefore entail the searching of several file systems, under different command authorities and with varying degrees of retrieval capabilities. Our date of response is governed by the time required to thoroughly search the least efficient of these systems.
3. Many of the Agency's records have become inactive and, as an economy measure, are stored in a records center. If "hits" made during the index search phase relate to inactive records, a not infrequent occurrence, it takes from two to three days to retrieve them from remote storage in order that their relevance can be determined, thereby delaying the process.

4. Searches in one component will often surface records originated by, or of subject-matter interest to, other components or other departments and agencies. The time required for reproduction and referral of such documents to the organization having cognizance for their review further delays completion of processing.
5. At best, the review of classified intelligence documents is a time-consuming process. A single request can involve the review of hundreds or thousands of documents and, depending upon the subject matter, there are a limited number of experts qualified to perform this task. Often the review must be done by senior officers and managers, with numerous other demands, often more urgent, placed upon their time. A very careful review by knowledgeable officers is required to ensure that sensitive information is not inadvertently released. Mistakes, needless to say, would be costly. Unless our sources are afforded protection from disclosure, they could lose confidence in our ability to maintain secrets, thereby impairing the Agency's ability to collect the foreign intelligence essential to national survival in this atomic age. Foreign nationals and other persons holding views inimical to U.S. national interests can and do seek information from the CIA under the Freedom of Information Act. Compliance with their requests and the resultant publicity given to the information released appears to have had the cumulative effect of leading persons or organizations who were once willing to cooperate with the Agency to question whether they can safely continue their collaboration without the risk of disclosure.

It should also be noted that many of the Freedom of Information requests which we receive are all-encompassing in scope, and other requests are for records concerning sensitive covert operations, the existence of which we are not even free to acknowledge. We are committed to the view that the Agency's analytical products, to the degree consistent with our obligation to protect intelligence sources and methods, should be made available to the American public. To this end, numerous unclassified monographs, reference aids, maps and translations of the foreign media are released by the CIA each year to the public through the distribution facilities of the Library of Congress, the Government Printing Office, and the Department of Commerce. In addition, be assured that every effort has been made by the Agency to comply fully with both the letter and spirit of the Freedom of Information Act, despite the drain on the Agency's resources. In many instances, however, compliance with the Act has led to the release of fragmentary and sometimes inaccurate data, which, rather than enlightening the public, result in a misinterpretation of what actually occurred. We are also concerned over what is widely, and not wholly incorrectly, perceived by our information sources to be a problem for the Agency in protecting its legitimate secrets.

In view of the above considerations, the major question is whether amendments can be made which would lessen the drain on Agency resources and also provide broader exemptions for intelligence material, particularly raw reports and operational data. If this is not possible, in my view, other legislative remedies to ameliorate these serious problems should address the following questions:

1. Should the benefits of the Freedom of Information Act, like those of the Privacy Act, be available to U.S. citizens and permanent resident aliens only? If this change is not made, we could at some point in the future find the CIA becoming a world information bureau at the expense of the U.S. taxpayer.
2. Should the mandatory response time on initial processing of requests be changed from the present 10 working days to 30 calendar days, plus an additional week for every 100 pages, or fraction thereof, of material requiring a review? At the same time, should the mandatory response time on appeals be changed from the present 20 working days to 60 calendar days, plus two additional weeks for every 100 pages, or fraction thereof, requiring a second review?
3. Should agencies be permitted to charge requesters for review time as well as search time?
4. Should requests be limited to one specific subject of manageable proportions rather than permitting blanket omnibus-type requests which cover a wide date span and a variety of topics?

I shall keep you informed of developments in this area of continuing concern.

Sincerely,

/s/ Frank C. Carlucci

Frank C. Carlucci

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