

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN

Plaintiff

v.

CENTRAL INTELLIGENCE AGENCY, et. al.
STANSFIELD TURNER
Defendants

Civil Action No. 78-1743

AFFIDAVIT OPPOSING MOTION TO DISMISS

1. I am the plaintiff pro se in this lawsuit. This is an action under the Freedom of Information Act, 5 U.S.C. 552 to obtain a document denominated by the defendants as CIA item #509-803. This 14 page document is withheld in full.
2. Plaintiff is reasonably certain that CIA item #509-803 is identical with Warren Commission Document 347, a January 31, 1964 CIA report to the Warren Commission entitled "Information developed by the CIA on the activity of Lee Harvey Oswald in Mexico City, 28 September - 3 October 1963 with attached photograph of Valeriy Vladimirovich Kostikov." Plaintiff can conclusively establish that item 509-803 and Commission Document 347 are identical if the defendants are required to answer question #1 of plaintiff's interrogatories of November 8, 1978.
3. On January 9, 1979 defendants filed a Motion to Dismiss, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Defendants contend that the document in question is properly withheld by virtue of Freedom of Information exemptions (b)(1), (b)(2), and (b)(3). Defendants also urge the Court to follow the July 12, 1978 Order of Judge John Sirica in Fensterwald v. C.I.A., Civil Action No. 75-0897 (D.D.C. 1978), an order which Judge Sirica vacated 16 days later. Plaintiff will answer each of defendants' contentions in the order they are set out in the Motion to Dismiss.
(b)(1)
4. 5 U.S.C. 552(b)(1) exempts from the Freedom of Information Act those records which are "(A) specifically authorized under criterion established under an Executive Order to be kept secret in the interest of national defense or foreign policy and (b) are in fact properly classified pursuant to such Executive Order."
5. The Executive Order presently applicable to classification of documents is E.O. 12065 (Federal Register- Vol. 43, No. 128 - Monday July 3, 1978) which went into effect December 1, 1978. The

lowest security classification provided for in the Order is "Confidential" (section 1-104), which requires that the release of such document "reasonably could be expected to cause identifiable damage to national security."

5. A clear example of information which would not cause identifiable damage to national security is information which has been previously released to the public with United States government approval. Any damage that might result from the release of such information would have already occurred at the time of the information's original release. The defendants' own Document Disposition Index, page 127 (Attachment A) states with respect to item 509-803 that "most of the substantive information in this document is available in other unclassified documents." (emphasis added) Plaintiff's own extensive study of Warren Commission and CIA documents indicates that nearly all the information in this document is now publicly available. (See Attachment B: Information on the Contents of CIA item 509-803 Gathered from Available Warren Commission and CIA Documents)

6. The Freedom of Information Act, specifically 5 U.S.C. 552 (b)(9) provides that "(a)ny reasonably segregable portions of a record shall be provided to any such person requesting such record after deletion of the portions which are exempt under this subsection." Since the defendants admit that most of the information in 509-803 is already publicly available, it would appear unlikely that there are no reasonably segregable portions. Yet CIA item # 509-803 is withheld in full.

7. The defendants claim that this publicly available information is inextricably mixed with operative details which if exposed, would compromise several sensitive foreign intelligence sources, as well as a sensitive foreign intelligence operational method." (Document Disposition Index, page 127) This claim is particularly unconvincing. First, plaintiff has evidence there are few, if any, sensitive operational details in CIA item# 509-803. Second, plaintiff has reason to doubt defendants' claim that such sensitive operational details, if they exist in item# 509-803, cannot be safely deleted.

8. The following two documents, one from the CIA and one from the Warren Commission, indicate there are few, if any, sensitive operational details in CIA item # 509-803 (assumed to be substantially identical with Warren Commission Document 347):

a) On March 11, 1964, over five weeks after the Warren Commission staff had received item 509-803, J. Lee Rankin, General Counsel of the Warren Commission wrote Senator Jacob Javits: "At this point in the investigation there appears to be nothing of significance which should not be revealed to the American public because of national security or any other considerations." (Attachment C)

(b) CIA item #498-204 is a CIA cable of January 29, 1964. Questions 3 and 4 of plaintiff's interrogatories of November 8, 1978, if required to be answered, will establish this is a cable from CIA Headquarters in Langley, Virginia to the CIA Mexico City station and that the February 1 report mentioned therein is CIA item #509-803. With this established plaintiff can show that CIA item #509-803 was especially written in such a way so as to protect the CIA's sources and methods. CIA item 498-204 reads: "On Saturday 1 Feb we will give commission a report on Lee Oswald activities in Mexico, presented so as to protect your sources and techniques." (Attachment D) Since CIA item 509-803 was written in a special way, so as to protect the Agency's sources and techniques, it is unlikely that it contains more than a few operation details which would jeopardize those sources and techniques.

9. Even assuming for the sake of argument that operational details whose public release would jeopardize Agency sources and techniques do appear in CIA item # 509-803, plaintiff has reason to dispute CIA's claim that such details are inextricably mixed with the publicly available information contained therein. In its recent release of hundreds of documents pertaining to the assassination of President Kennedy, the CIA has managed to successfully delete operational details from dozens of documents. Unlike CIA item # 509-803, these documents were not prepared in a special way so as to protect the sources and methods involved. Unlike CIA item 509-803, which was prepared for an outside government commission, these documents are for the most part internal agency communications, prepared for intra-agency use. Yet while the CIA has been able to successfully delete these documents, releasing the remaining body of them, the Agency claims it cannot reasonably segregate CIA item 509-803.

10. CIA item # 5-1A (Attachment E) illustrates how the CIA has been able to delete sensitive operational details from its documents. The Document Disposition Index, page 2, states with respect to this item:

"This document was released with portions deleted. This document describes the approach of an American named Oswald to a Soviet Embassy. The portions deleted include information describing sources and methods, operational cryptonyms, Agency components, and filing instructions.... The deletions were made under the authority of exemptions (b)(1), (b)(2), and (b)(3).

In this document the CIA was able to delete essentially the same type of information, even though this is an internal agency document which actually mentions CIA sources and methods.

11. Plaintiff believes that the key to this dispute may be that the CIA is unaware of the true extent to which information in item # 509-803 is now publicly available. It could well be that CIA item # 509-803 continues to be withheld simply because the

responsible Agency officials are not fully familiar with what is and is not in the public domain. It would not be the first time CIA officials have invoked the (b)(1) and (b)(3) exemptions to prevent the release of material which was already in the public domain with prior CIA approval. A particularly telling example occurred in Levy v. US Secret Service, Civil Action No. 78-0307 (D.D.C. 1978) where Robert E. Owen, Information Review Officer of the CIA Directorate of Operations, submitted an affidavit which stated, inter alia, why portions of a certain CIA cable had to be deleted. Owen's affidavit of May 8, 1978 (Attachment F) stated that the release of the deleted portions would "reveal an intelligence source and method" and are "currently and properly classified pursuant to E.O. 11652." Yet the full text of this cable, without deletions, had been released by the National Archives with CIA approval in 1972. (Attachment G) Furthermore, by the time of Mr. Owen's affidavit, the full, undeleted text of this telegram had appeared in two books, as well as a magazine article.

(They've Killed the President, by Robert Sam Anson, page 216; The Assassinations, edited by Paul Hoch and Peter Dale Scott, page 450; "The CIA and the Man Who Was Not Oswald" by Bernard Fensterwald and George O'Toole, New York Review of Books, April 3, 1975;) Mr. Owen is the same CIA official who denied plaintiff's original Freedom of Information request for CIA item # 509-803, and the only CIA official to submit an affidavit in this suit. Mr. Owen's evaluation of CIA item # 509-803, as contained in his affidavit is suspect, as the Levy case calls into question his knowledge of what information is already in the public domain, and hence what information might damage national security by its release.

(b)(2)

12. 5 U.S.C. 552(b)(2) exempts from the Freedom of Information Act material which is "related solely to the internal personnel rules and practices of an agency." This exemption cannot be used to withhold this document in full. CIA item # 509-803 concerns information developed by the CIA pertaining to Lee Oswald's activities in Mexico City from September 27 to October 3, 1963. Its focus is on the activities of Lee Oswald in Mexico City, not on the internal activities of the Agency. Additionally CIA item 509-803 is not an intra-agency document but was prepared for an outside government commission. It is difficult to see how such a document could be solely related to the practices of the C.I.A.

13. It is possible that 509-803 contains some material which arguably falls into the (b)(2) exemption. But plaintiff has reason to believe that this material is few and far apart. Had defendant's affidavit met the requirements of Mead Data Cent., Inc. v. U.S. Department of Air Force, 566 F. 2d 242 (D.C Cir. 1977) they would have correlated their claims of exemption with the particular portions of the document to which they apply. If they had done so

plaintiff would have been able to show that the claimed (b)(2) exemption applies to only a few of the 14 pages of this document. In such a situation clearly these references would be reasonably segregable under provision (b)(9) of the Freedom of Information Act.

Furthermore, exemption (b)(2) "is not applicable to matters subject to a ... genuine and significant public interest." Department of the Air Force v. Rose, 425 U.S. 352, 369, (1976). As the District of Columbia Appeals Court has held, a distinction should be made "between minor or trivial matters and those more substantial matters which might be subject to legitimate public interest." Vaughan v. Rosen(II) 523 F. 2d 1136, 1142 (D.C. Cir. 1975) The performance of the CIA in its investigation of the assassination of President Kennedy is of continuing genuine public interest. Only last week the U.S. House Select Committee on Assassinations issued its final conclusions, which stated on page 8 that "the Central Intelligence Agency was deficient in its collection and sharing of information both prior to and subsequent to the assassination." Agency filing instructions can be very useful to Warren Commission scholars in evaluating the Agency's performance in matters relating to President Kennedy's assassination. Such information could only result in a more knowledgeable and valuable evaluation of the Agency's work by serious researchers, whose labors could benefit not only the CIA, but the country as well.

(b)(3)

14. 5 U.S.C. 552 (b)(3) exempts from the Freedom of Information Act material "specifically exempted from disclosure by statute ... provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld."

15. The statute the defendants were expected to invoke was the National Security Act of 1947, 50 U.S.C. 403(d)(3). Only a bare reference to this statute is contained in defendant's Motion to Dismiss. The pertinent section of this Act provides "that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

16. In Phillipi v. CIA, 546 F. 2d 1009, 1015 n. 14 (D.C. Cir. 1976) the D.C. Court of Appeals held that 403(d)(3) qualified as a (b)(3) statute, but also held that the CIA must show that the release of the disputed document could reasonably be expected to lead to unauthorized disclosure of intelligence sources and methods.

17. CIA item # 498-204, noted above, clearly refutes defendant (b)(3) claim. As stated earlier, item # 498-204 states that item 509-803 was written so as to protect the Agency's sources and techniques. A document especially written so as to protect the CIA's

sources and methods in no way could be reasonably expected to lead to the unauthorized disclosure of those sources and methods. Defendants' own document shows that the (b)(3) provision is not applicable.

Fensterwald Case

18. Defendants urge this Court to follow the decision of Judge Sirica of July 12, 1978 in Fensterwald v. CIA, Civil Action No. 75-0897 (D.D.C. 1978) This case is not applicable here for two important reasons.

19. First and foremost, Judge Sirica's July 12 order awarding partial summary judgment to the CIA was vacated by him 15 days later. There is no existing order for this Court to follow. The net effect of the Fensterwald case was that the Court entered no judgment concerning the validity of any exemptions claimed by the CIA with respect to any documents pertaining to the assassination of President Kennedy. Clearly this suit cannot preclude the plaintiff from seeking CIA item # 509-803.

20. Secondly, the Fensterwald case involved an in camera review of some 51 documents relating to the murder of President Kennedy. However CIA item # 509-803 was not included among those documents. Judge Sirica never examined CIA item # 509-803. Whether Judge Sirica intended this in camera review to somehow apply to CIA item #509-803 through extrapolation is not clear to the plaintiff after reviewing the pertinent documents. However whatever scope Judge Sirica might have intended his July 12 Order to have, it became inconsequential after he vacated the Order on July 28. CIA's subsequent motion to have partial summary judgment restored was denied by Judge Sirica by Order of September 19, 1978.

Dated: Washington, D.C.
January 10, 1979

Respectfully Submitted

Mark A. Allen

Mark A. Allen
Pro Se

102 Shamrock Rd. #16
Charlottesville, Va. 22903

(804) 295-6236

No. of PagesDateDocument No.

505 - 212 30 January 1964 1

Disposition - This document was released with portions deleted. The deleted portions include information identifying a number of Agency stations in specific cities abroad, the identity of a number of Agency components and several Agency staff employees. Also deleted were operational cryptonyms and mention of a sensitive foreign intelligence operational method. Agency internal filing instructions were also deleted. The deletions were made under the authority of exemptions (b)(1), (b)(2) and (b)(3).

506 - 213 9 January 1964 1

Disposition - This document was released with portions deleted. The deleted portions include information identifying Agency components and staff employees, as well as Agency internal filing instructions. The deletions were made under the authority of exemptions (b)(2) and (b)(3).

507 - 802 31 January 1964 2

Disposition - This document was denied. The document is a brief review of information provided by the FBI. The information has been referred to that agency and will be dealt with directly by the bureau.

508 - 214 30 January 1964 2

Disposition - This document was released with portions deleted. The deleted portions include information from which it would be possible to identify a foreign intelligence source, as well as information identifying Agency components and Agency staff employees. Also deleted was the identity of a special agent of the FBI and Agency internal filing instructions. The deletions were made under the authority of exemptions (b)(1), (b)(2), (b)(3) and (b)(7)(F).

509 - 803 31 January 1964 14

Disposition - This document was denied. The document contains a discussion of a collection of information available from very sensitive intelligence sources and in one instance the results of a sensitive foreign intelligence operational method of collection. Most of the substantive information in this document is available in other unclassified documents. In this particular document, it is inextricably mixed with operational details which, if exposed, would compromise several sensitive foreign intelligence sources, as well as a sensitive foreign intelligence operational method. In addition, the document contains information identifying a number of Agency components and Agency internal filing instructions. This denial was made under the authority of exemptions (b)(1), (b)(2) and (b)(3).

The following information is attributed to pages 1-3 of CIA item # 509-803: (assumed to be Warren Commission Document 347)

a) On October 9 "CIA station, Mexico City received information concerning visit of Oswald to Soviet Embassy. (347 p-1)" Oswald-Ruby Chronology and Summary of Chronology, page 710, Entry 45, Record Group 272, National Archives.

b) On October 10, 1963 "CIA Headquarters, Washington, advises FBI headquarters that an American named Lee Oswald had contacted the Soviet Embassy in Mexico City on October 1, 1963 and referred to an earlier visit on September 28, 1963. He asked about telegram that an Embassy official, probably Kostikov, a known Soviet State Security (KGB) Officer, had agreed to send to Soviet Embassy in Washington for him. CIA apparently indicated the possible identity between this Lee Oswald and the defector returnee Lee Harvey Oswald. CIA report also included a physical description of an individual who was believed to have been the Oswald involved. (It was subsequently established that this description did not fit Oswald.)

"Also on 10/10/63, CIA headquarters sent a summary of all background information in its files on Oswald to its Mexico City station and instructed the station to pass the substance of its October 9 report to Mexico City representatives of interested federal agencies, including the local FBI representative. This instruction was immediately carried out. According to CIA, there were no requests from recipients of the report for further information or for follow-up investigation. (Comm. No. 347, pp. 1-3)" Stern-Rankin Memorandum of February 17, 1964, page 24, Entry 25, Record Group 272, National Archives.

c) On December 9, 1960 the CIA opened its file on Oswald "to accommodate biographic information developed by CIA in response to an inquiry from the Department of State on a list of American defectors in Soviet Bloc countries... The Department of State inquiry was dated 25 October 1960. An interim reply was given by CIA on 3 November 1960; a final reply on 21 November 1960. Until early October, 1963 contents of Oswald file held by CIA consisted entirely of press materials and disseminations received from the Department of State, the Federal Bureau of Investigation, and the Navy Department. (Comm. No. 347, p. 2)" Stern-Rankin memorandum of 2/17/64, pages 33-4, supra A February 12, 1964 letter from J. Lee Rankin, General Counsel to the Warren Commission to John McCone, Director of the CIA, indicates that the above information appears in a footnote on page 2 of this document. The quotation above may well be a direct quote from CIA item 509-803.

The following information has been attributed to pages 6 and 7 of CIA item # 509-803:

a) On September 27, 1963 "Oswald visited Cuban Embassy, Mexico City, and requested visa to transit Cuba on his way to the Soviet Union. Sylvia Duran, Clerk at the Cuban Embassy states Cuban Consulate would only give him a visa if a Soviet visa were issued. Oswald advised he was a member of the FFCC and the Soviet Embassy confirmed that he had visited there and shown them a letter from the Soviet Consulate in Washington, D.C., indicating he was awaiting visa for him and his wife. (347 pp-6 and 7) Oswald-Ruby Chronology and Summary of Chronology, supra, page 685.

The following information has been attributed to page 8 of CIA item 509-803:

a) On November 23, 1963 the CIA sent a cable to the FBI "concerning activities of North American, possibly identical with Oswald, who visited Soviet and Cuban Embassies in Mexico on 28 September 1963" CIA item # 633-797, paragraph 2(g)

b) On September 28, 1963 "Oswald again visited Cuban Embassy", according to Sylvia Duran. "While there he talked on the phone with Soviets in Russian. (347 p-8)

The following information has been attributed to pages 8 and 9 of CIA item # 509-803:

a) October 1, 1963: "In midmorning (Oswald) contacted Soviet Embassy to determine if telegram to Soviet Embassy, Washington, had been answered. Believed to have dealt with VALERIY VLADOMIROVICH KOSTIKOV, senior officer of five Soviet consular representatives. (347 p-829((sic))) Oswald-Ruby Chronology and Summary of Chronology, supra, page 692.

According to a April 21, 1964 letter from Warren Commission General Counsel J. Lee Rankin to CIA Deputy Director of Plans Richard Helms, pages 11-14 of item # 509-803 deal with Gilberto Alvarado Ugarte, a young Nicaraguan who claimed to have witnessed a suspicious meeting between Oswald and several unknown individuals at the Cuban Embassy in Mexico City. This incident is described in some detail in publicly available Commission Document 1000 and Commission Exhibit 3152.

More extensive information on what is contained in CIA item 509-803 is found in a 2/14/64 Warren Commission internal memorandum from staff members William Coleman, Jr. and W. David Slawson to J. Lee Rankin. While this memo does not contain any specific cites to the document in question, it contains information which only could have been gathered from this document. Information concerning Oswald's activities in Mexico City was almost exclusively in the hands of the CIA, and the Agency's only report to the Commission on Oswald's activities in Mexico prior to the date of this memo is CIA item # 509-803. The relevant pages are 7 through 10.

JRM:WJ:dl
3/5/64

MAR 11 1964

Confidential

Thomas E. DeLoach

Director, Federal Bureau of Investigation

Dear Sir:

I wish also to acknowledge receipt of several communications regarding the work of this Committee which you also referred to this office for comment. I appreciate the fact that you are providing to your agency for I am hopeful that you will find this information to be of value to the members of the Committee on the part of the Bureau which is being furnished.

As you know, this Committee was established by President Johnson to investigate and report upon all the activities and efforts being undertaken for the promotion of Communism in the United States and to make recommendations for the elimination of such activities. It is the duty of this Committee to investigate and report upon all the activities and efforts being undertaken for the promotion of Communism in the United States and to make recommendations for the elimination of such activities. It is the duty of this Committee to investigate and report upon all the activities and efforts being undertaken for the promotion of Communism in the United States and to make recommendations for the elimination of such activities.

It is noted to the effect of the above mentioned report in the knowledge of the Committee that the Committee has the information which would not be reflected by such a report. The fact that the Committee is providing information to the Bureau is a matter of internal security and should be kept confidential. The Committee has the information which would not be reflected by such a report. The fact that the Committee is providing information to the Bureau is a matter of internal security and should be kept confidential.

cc: Mr. Williams - Bureau
Mr. Tamm

I am enclosing the statement furnished by the Commission announcing that the provisions of the Freedom of Information Act have been amended to assist the Commission in this effort.

In the course of the last few weeks here in London, the House has introduced certain amendments, the Commission early last month. Before the Federal Bureau of Investigation and my other Federal Agency officials. Marguerite G. Gorman, Assistant to the Acting Director, ever since November 22, 1953, James G. Gorman has been free to see whatever she wishes to see.

The Chief Justice has authorized us to assure you that none of his records regarding the Commission that interest in matters that the significant conclusions of fact established by this institution that will not be made known to the American public. The Chief Justice of this Commission will be complete and comprehensive by reference to relevant testimony and/or underlying investigative material. As this matter in the investigation there appears to be nothing of disclosure which should not be referred to the American public in view of national security or any other consideration. In 1954, the Chief Justice stated as follows:

The purpose of this Commission is, of course, essentially to report upon the activities and to the American public everything that has transpired under this legislation. All of it will be made available to the American public. The records of the work of the Commission will be reported for the public.

I hope that this letter is of some assistance to you in connection with this correspondence and I remain available to assist you in any way possible.

Sincerely,

J. Lee Rankin
General Counsel

Enclosure

CLASSIFIED MESSAGE

[Attachment D]

ORIG :
UNIT :
EXT :
DATE : 29 JANUARY 1964

INDEX
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20 JAN 31 22 41
ROUTINE

TO :
FROM: DIRECTOR
CONF:
INFO:

TO :
CITE DIR: 9782

TO :
PRIORITY :
INFO :

1. MR. HELMS APPEARED BEFORE WARREN COMMISSION ON 28 JANUARY AND RECEIVED GUIDELINES ON WHAT THEY EXPECT FROM CIA. ON SATURDAY 1 FEB MS WE GIVE COMMISSION A REPORT ON LEE OSWALD'S ACTIVITIES IN MEXICO, PRESENTED SO AS TO PROTECT YOUR SOURCES AND TECHNIQUES. PLS REVIEW YOUR REPORTING TO THIS SUBJECT AND CABLE IN ANYTHING ADDITIONAL YOU MAY HAVE IN TIME FOR US TO INCLUDE IN REPORT.

END OF MESSAGE

CS COPY

498-204

Document Number
for FOIA Review on MAY 1976

RELEASING OFFICER
COORDINATING OFFICERS

AUTHENTIC OFFICE

REPRODUCTION BY OTHER THAN THE ISSUING OFFICE IS PROHIBITED.

[Attachment D]

DIRECTOR

33 0074

DM

TELETYPE

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DIR CITE

SOURCE OM

1. ACC 1 OCT 63, AMERICAN MALE SAID

NAME: ~~LEE~~ OSWALD

HE AT SOVEMB ON 28

SEPT WHEN SPOKE WITH CONSUL WHOM HE BELIEVED RE VALERIY VLADIMIROVICH

KOSTIKOV, SUPJ ASKED SOV GUARD IVAN OBYEDKOV

, IF THERE

ANYTHING NEW RE TELEGRAM TO WASHINGTON.

NOTHING RECEIVED YET, BUT REQUEST HAD BEEN SENT.

2. HAVE PHOTOS MALE APPEARS RE AMERICAN

APPARENT AGE 35, ATHLETIC BUILD,

APPROX 6 FEET, RECEDING HAIRLINE, WINDING TOP. WORE KHAKIS AND SPORT SHIRT.

3. NO LOCAL DISSEM.

5-11

Document Number

for FOIA Review on APR 1976

15 Oct.

Requested photo photo Oswald

9 Oct 63

63 COPY

[Redacted Box]

REPRODUCTION BY OTHER THAN THE ISSUING OFFICE IS PROHIBITED

Copy No.

Attachment E

19 OCT 63 IN 36017

1	2
2	5
3	6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL J. LEVY,)
)
) Plaintiff,)
)
) v.)
)
) U. S. SECRET SERVICE, et al.,)
)
) Defendants.)

Civil No. 78-0307

FILED

MAY 24 1978

JAMES F. DAVEY, Clerk

AFFIDAVIT

Robert E. Owen, being first duly sworn, deposes and says:

1. I am the Information Review Officer for the Directorate of Operations of the Central Intelligence Agency (CIA). My responsibilities include the review of the Directorate of Operations (DO) documents which are the object of Freedom of Information and/or Privacy Act requests to and litigation against the CIA. I am authorized to classify government documents up to and including Top Secret. 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. Through my official duties I have become acquainted with the Freedom of Information Act (FOIA) request of the plaintiff which is the basis of the above-captioned litigation. On 21 July 1977, the U.S. Secret Service, Department of Treasury, referred one document to the CIA which had surfaced in their search for documents responsive to the FOIA request of plaintiff, see CIA Exhibit "A." The document was referred to CIA for review because it had been originated by CIA and was classified. A declassification review by CIA was required prior to any action to release the document outside of government channels prescribed for the handling and protection of classified information. The mandatory review of classified material is prescribed and set forth in section 5 of Executive Order 11652 on Classification and Declassification of National Security Information and Material. In the review of the document by CIA, certain portions of the

document were removed to allow for its declassification and release to the plaintiff. The segregated version of the document was forwarded to plaintiff on 2 September 1977, see CIA Exhibit "B." As to those deleted portions of the released document, attached to CIA Exhibit "B," I have determined that the information withheld may not be released:

- a. because it is currently and properly classified pursuant to Executive Order 11652 and thus exempt from disclosure pursuant to the FOIA exemption (b)(1); and/or
- b. because the information reveals an intelligence source and method in need of continued protection and thus exempt from disclosure pursuant to FOIA exemption (b)(3).

3. The document in question is a CIA cable initially addressed to the U.S. Department of the Navy, the Department of State and the Federal Bureau of Investigation, dated 11 October 1963. The document was subsequently made available to other government agencies, including the Secret Service. It is further identified as CIA NBR 74673. Several portions of the document were deleted prior to release to the plaintiff. The deleted portions contained information about the nature and identity of the intelligence source. That information was also deleted because it is classified to protect the information from unauthorized disclosure. The classification markings on the original version of the document were also deleted in the process of producing a declassified version of the document.

4. The authority to classify documents is derived from a succession of Executive orders, the most current of which is Executive Order 11652, (3 C.F.R. 339, 1974 ed.). The purpose of the Order is to establish a system to protect official, classified information or material against unauthorized disclosure. The introductory comments of the Executive Order state that "[T]he official information or material, referred to as classified information or material in this order, is expressly exempted from public disclosure by section 552(b)(1) of Title 5, United States Code. Wrongful disclosure of such information or material is recognized in

the Federal Criminal Code as providing a basis for prosecution. The Executive Order further provides for a system of conspicuous markings of documents on their face in such a manner as to alert custodians to the fact that the document contains sensitive information and that dissemination should be restricted to persons with an established need for such information and who have been formally granted an appropriate security clearance for access to such information. Executive Order 11652 specifically sets forth the qualifications of officials empowered to classify documents, and such classifying officials are charged with the responsibility for determining whether the particular document contains classified information. At the threshold level, the criterion to be used to determine whether a document is classifiable is whether its unauthorized disclosure could reasonably be expected to cause damage to the national security. Examples of classified information cited in the Executive Order, while illustrative rather than exhaustive, include intelligence operations, national defense plans and foreign relations matters affecting the national security.

5. Documents containing information which reveal intelligence sources in need of continued protection must also be withheld. Confidential sources of intelligence information can be expected to furnish information only so long as they feel secure in the knowledge that they are protected from retribution or embarrassment by the pledge of confidentiality that surrounds the information transaction. In the case of the American businessman, for instance, who is willing to share valuable information with his government's intelligence service gathered in the course of conducting his business, or who is willing to cooperate in assisting CIA intelligence gathering operations abroad, revelation of the fact that he has so acted may result in serious embarrassment and loss of business in foreign countries for himself or his company. In the case of a foreign national who has been willing to act as an agent or an informant for American intelligence and is exposed, the consequences are swift and sure. That individual faces imprisonment or, possibly, death. Such individuals, understandably, insist on a pledge of extreme secrecy before agreeing to cooperate with American intelligence. It is only with such a pledge of extreme secrecy that such individuals can be persuaded to remain cooperative.

6. Informants who do remain within their society are at all times subject to retribution if and when they are discovered as informants. This is also true of informants who are no longer active. In many cases the very nature of the information passed tends to reveal its source because of the limited number of individuals having access to the information. Under these circumstances, the informant is perpetually vulnerable to discovery, and retribution may be a real threat for him and his family for many years. For these reasons the pledge of secrecy, as a condition precedent to cooperation with American intelligence, is absolute in its terms and goes beyond a mere assurance that some discretion will be exercised before the information is released and beyond arbitrarily established time spans. The exemptions from the General Declassification Schedule, spelled out in section 5 (B) of Executive Order 11652, clearly recognize and provide for the continuing hazards posed by participation in secret intelligence activities.

7. Intelligence methods must be protected in cases where the capability itself, or the application of certain techniques, is unknown to those who would use countermeasures. Secret information collection techniques or devices can be as vital to intelligence agencies as the surprise element or secret weapons can be to military forces. In certain situations, intelligence methods, which may no longer in themselves be secret, are used in circumstances which require secrecy. In such circumstances, the fact of their use is the information that must be protected. It thus follows that the patterns and practices of the CIA, as well as the specific techniques and devices, must be protected from disclosure to prevent the damage that can be caused if information of such matters is made available to hostile agencies who would seek to penetrate, mislead and negate the intelligence operations of the United States.

8. The information deleted from the document related to intelligence sources and methods as described in paragraphs 4 through 7 supra, and is thus withheld pursuant to FOIA exemption (b) (3) as specifically exempted from disclosure by the statutory provision that the Director of CIA shall be responsible

for protecting intelligence sources and methods (50 U.S.C. 403(d)(3) and 50 U.S.C. 403g). The nature of the information is also such that the unauthorized disclosure could reasonably be expected to cause damage to national security pursuant to Executive Order 11652, therefore, the information was also withheld pursuant to FOIA exemption (b)(1).

Robert E. Owen
Robert E. Owen

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this 8th day of May 1978.

James R. Givins
Notary Public

My commission expires: 22 September 1981

192512Z
FM CENTRAL INTELLIGENCE AGENCY CIA NR0 74875

TO DEPARTMENT OF THE NAVY
ZEN/DEPARTMENT OF STATE
ZEN/FEDERAL BUREAU OF INVESTIGATION

PASS THE FOLLOWING CLASSIFIED MESSAGE VIA SECURE MEANS.

SUBJECT: LEE HENRY/OSWALD

1. ON 1 OCTOBER 1963 A [REDACTED] MEXICO REPORTED THAT AN AMERICAN MALE, [REDACTED] IDENTIFIED [REDACTED] AS LEE OSWALD, CONTACTED THE SOVIET EMBASSY IN MEXICO CITY INQUIRING WHETHER THE EMBASSY HAD RECEIVED ANY NEWS CONCERNING A TELEGRAM WHICH HAD BEEN SENT TO WASHINGTON. THE AMERICAN WAS DESCRIBED AS APPROXIMATELY 55 YEARS OLD, WITH AN ATHLETIC BUILD, ABOUT SIX FEET TALL, WITH A RECEDING HAIRLINE.

2. IT IS BELIEVED THAT OSWALD MAY BE IDENTICAL TO LEE HENRY OSWALD, BORN ON 13 OCTOBER 1929 IN NEW ORLEANS, LOUISIANA, A FORMER U.S. MARINE WHO DEFECTED TO THE SOVIET UNION IN OCTOBER 1959 AND LATER MADE ARRANGEMENTS THROUGH THE UNITED STATES EMBASSY IN MOSCOW TO RETURN TO THE UNITED STATES WITH HIS RUSSIAN BORN WIFE, MARINA NIKOLAEVNA PUSAKOVA, AND THEIR CHILD.

3. THE INFORMATION IN PARAGRAPH ONE IS BEING DISSEMINATED TO YOUR REPRESENTATIVES IN MEXICO CITY. ANY FURTHER INFORMATION RECEIVED ON THIS SUBJECT WILL BE FURNISHED YOU. THIS INFORMATION IS BEING MADE AVAILABLE TO THE IMMIGRATION AND NATURALIZATION SERVICE.

CLASSIFIED ACT (NO OTHERS)

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62-6523

CLASSIFICATION OF THIS DOCUMENT IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE	DATE OF DECLASSIFICATION
FORM NO. 1	DATE OF ISSUE
62-6523	62 MAY OCT 61
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ENCLOSURE (2)

ATTACHMENT

~~SENSITIVE AND METHODS EMPLOYED~~

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505
24 MAR 1964

Commission No. 631

MEMORANDUM FOR: Mr. J. Lee Rankin

SUBJECT: CIA Dissemination of Information
on Lee Harvey OSWALD, dated
10 October 1963

1. Reference is made to paragraph three of your letter, dated 16 March 1964. You requested that the Commission be furnished a copy of the dissemination on Lee Harvey OSWALD made to several Government agencies by CIA on 10 October 1963.
2. An exact copy of this dissemination (Out Message No. 74673) by teletype, is attached. It was transmitted to the Department of State, Federal Bureau of Investigation and Department of the Navy. A copy was concurrently made available by hand to the Immigration and Naturalization Service.
3. Please note that OSWALD's middle name was erroneously given as "Henry" in the subject line and in paragraph two of the dissemination. (The same error occurs in the message to the Navy discussed in paragraph four, below.) The maiden surname of Mrs. OSWALD was mistakenly listed as "PUSAKOVA".
4. On 23 October (the correct date), a teletyped message (Out No. 77978) was sent to the Department of the Navy referring to Out No. 74673, and requesting that the Navy furnish CIA as soon as possible two copies of the most recent photograph of OSWALD that was available, for use in checking the identity of the Lee OSWALD in Mexico City. These photographs had not been supplied to this Agency by 22 November 1963. Our conclusion that the photograph did not refer to OSWALD was based on press photos generally available on 23 November 1963.

By authority of: *SA/12/2/92*
 Name and title of person making the change: *Rankin*
 Date: *11/17/64*

~~CLASSIFICATION CANCELED~~

By authority of ~~Archivist of United States~~

By ~~.....~~
Date ~~.....~~ Case ~~.....~~

~~SENSITIVE AND METHODS EMPLOYED~~

~~SENSITIVE AND METHODS EMPLOYED~~

~~SECRET~~

~~SECRET~~

CD 631

5. This memorandum and the attachments convey information originating with very sensitive sources and methods. They therefore bear an appropriate sensitivity indicator.

Richard Helms
Richard Helms
Deputy Director for Plans

Attachments:

- A - Copy of Out Message 74673
- B - Copy of Out Message 77978

CLASSIFICATION CANCELED
By authority of: *CD Helms*, 12/22/72

Name and title of person making the change: *PH*
Date: *1/10/93*

~~SECRET~~

Attachment A

Out Message No. 74673, dated 10 October 1963 and filed at 0800 hours, to Department of State, Federal Bureau of Investigation, Department of the Navy.

Subject: Lee Henry OSWALD

1. On 1 October 1963 a reliable and sensitive source in Mexico reported that an American male, who identified himself as Lee OSWALD, contacted the Soviet Embassy in Mexico City inquiring whether the Embassy had received any news concerning a telegram which had been sent to Washington. The American was described as approximately 35 years old, with an athletic build, about six feet tall, with a receding hairline.
2. It is believed that OSWALD may be identical to Lee Henry OSWALD, born on 18 October 1939 in New Orleans, Louisiana. A former U.S. Marine who defected to the Soviet Union in October 1959 and later made arrangement through the United States Embassy in Moscow to return to the United States with his Russian-born wife, Marina Nikolaevna Pusakova, and their child.
3. The information in paragraph one is being disseminated to your representatives in Mexico City. Any further information received on this subject will be furnished you.

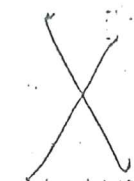
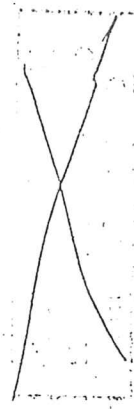
making the change:

MNFL

1/10/72
MNF

10/22/72
10/22/72

CD 631



~~SECRET~~ CD 631

This information is being made available to the Immigration and Naturalization Service.

CLASSIFIED BY *SA*
By auth: *CSA B5, 1422/72*
Name: *DR. GARGU*
Date: *1/10/73*

B
X