

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN,
Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY,
et al.,
Defendants.

Civil Action No. 78-1743

MOTION TO DISMISS

The defendant moves to dismiss the action for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1), Federal Rules of Civil Procedure.

In support of that motion, the defendant submits a statement of points and authorities and affidavits. A proposed order is also submitted.

Respectfully submitted,

EARL J. SIBBERT
United States Attorney

ROYCE C. LAMBERTH
Assistant United States Attorney

LAWRENCE T. BENNETT
Assistant United States Attorney

UNITED STATES DISTRICT COURT
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STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This is a Freedom of Information Act suit, 5 U.S.C. §552.

There is only one document at issue. We respectfully submit that the document is properly withheld from public inspection pursuant to 5 U.S.C. §552(b)(1), (b)(2), and (b)(3). The Court therefore lacks jurisdiction over the subject matter. 5 U.S.C. §552(a)(4)(B).

The document at issue is fourteen pages in length. It is dated January 31, 1974. The CIA described the document in a Vaughn v. Rosen, [484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974)] index filed in Bernard Fensterwald v. CIA, Civil Action No. 75-0897 (D.D.C. 1978) (Sirica, J.) as follows:

<u>Document No.</u>	<u>Date</u>	<u>No. of Pages</u>
* * *	* * *	* * *
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).

Page 127 of 320 page Document Disposition Index Filed in Fensterwald, supra, January 21, 1977. (A copy of page 127 of the Index is attached hereto as Exhibit 1, Attachment A.)

Document Properly Classified

The former Information Review Officer for the CIA's Directorate of Operations, Charles A. Briggs, submitted a detailed affidavit in Fensterwald, supra, describing why certain information in 1,264 of the 1,363 documents at issue in that case was properly classified. The disposition of these 1,264 documents was primarily the responsibility of the Directorate of Operations. Briggs' affidavit, ¶2. (A copy of the Briggs affidavit, sworn to April 14, 1977 and filed May 20, 1977, is attached hereto as Exhibit 1, Attachment Document No. 509-803 was reviewed by Mr. Briggs. Briggs' affidavit, ¶3. Briggs' determined that of the 1,264 documents:

the portions deleted and the documents denied, for which classification is asserted, are currently and properly classified because their release could cause damage to the national security in terms of disrupting foreign relations, compromising complex cryptological and communications intelligence systems and revelation of sensitive intelligence operations. Each such document bears the appropriate markings on its face to evidence its classified status.

Briggs' affidavit, ¶5.

On December 1, 1978, a new classification order became effective - Executive Order No. 12065 (Fed. Reg. Vol. 43, No. 128, July 3, 1978). The CIA has conducted another classification review of the document at issue in this action and has determined that the document is still properly classified. See the affidavit of Robert E. Owen, sworn to January 9, 1979, attached hereto as Exhibit 1.

The Exemptions Applicable To This Document

(b) (1)

The Congress has exempted from the FOIA documents that are:

(1)(A) specifically authorized under criteria established by 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 U.S.C. §(b)(1)(1976). See Briggs' affidavit, ¶2(a); Robert E. Owen affidavit, ¶3. See also the following decisions:

Ray and Schapp v. Turner, No. 77-1401 (D.C. Cir. Aug. 24, 1978);
Adele Halkin v. Helms, Nos. 77-1922, 77-1923 (D.C. Cir. June 16,
1978); Weissman v. CIA, 565 F.2d 692 (D.C. Cir. 1977); Phillipi v.
CIA, 546 F.2d 1009 (D.C. Cir. 1976); Serbian Eastern Orthodox
Diocese v. CIA, Civil Action No. 77-1412 (D.D.C. Oct. 20, 1973)
(attached as Exhibit 2).

(b)(3)

The Congress has also provided that the FOIA does not apply
to matters that are:

* * *

(3) specifically exempted from disclosure by
statute (other than section 552b of this title),
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. . . .

5 U.S.C. §(b)(2) (1976). See Briggs' affidavit, ¶2(b), 50 U.S.C.
§403(d)(3), 403g; Goland v. CIA, No. 76-1800 (D.C. Cir. May 23, 1978);
John D. Marks v. CIA, No. 77-1225 (D.C. Cir. Aug. 24, 1978); Phillips
v. CIA, supra.

(b)(2)

The Congress has also provided that the FOIA does not apply
to matters that are:

(2) related solely to the internal personnel
rules and practices of an agency.

5 U.S.C. §(b)(2) (1976). See Briggs' affidavit, ¶2; Ginsburg,
Feldman & Bress v. FEA, No. 76-1759 (D.C. Cir. Feb. 14, 1978);
James A. Boyce v. Deputy Director, Civil Action No. 78-0084 (D.D.C.
Oct. 25, 1978) (Smith, J.). See also Department of the Air Force v.
Rose, 425 U.S. 352, 369 (1975); Fonda v. CIA, 434 F.Supp. 498, 503
(D.D.C. 1977); Vaughn v. Rosen, supra, 523 F.2d 1136, 1143 (D.C.
Cir. 1975).

Fensterwald Decision Of Judge Sirica

We urge this Court to follow the decision of Judge Sirica
of July 12, 1978 in Fensterwald. Judge Sirica, after making an
in camera inspection of some of the documents at issue in that case
(Document No. 509-803 was not inspected), found that the (b)(1),
(b)(2), and (b)(3) information was properly withheld. See

Memorandum Opinion of July 12, 1978 at 1-7 (attached hereto as Exhibit 1, Attachment C.) 1/

In the recent decision of Consumers Union Of The United States, Inc. v. Consumer Product Safety Commission, No. 75-2059 (D.C. Cir. Dec. 22, 1978), the Circuit Court reaffirmed the rule of the doctrine of stare decisis in FOIA suits:

We surely do not gainsay that "the doctrine of stare decisis is still a powerful force in our jurisdiction." [Citing United States v. Maine, 420 U.S. 515, 527 (1975)]. So, a court reviewing a FOIA claim may choose to defer to a previous judicial decision that the Act does or does not apply to particular documents, where the prior action sought disclosure or restraint. Slip op. at 13. [Footnotes omitted].

After Judge Sirica made an in camera inspection of some of the documents described in the Briggs affidavit, he concluded:

This process has now been completed and the Court has determined, based on the inspection of each in camera document, that defendant's claims of exemption should be sustained in all but a few instances [(b)(6) and (b)(7)(F)].

Memorandum Opinion of July 12, 1978 at 1.

We urge this Court to adopt the finding of Judge Sirica that the (b)(1), (b)(2), and (b)(3) information at issue was properly withheld from public inspection.

Agency Affidavit Entitled To Substantial Weight

The affidavit of Mr. Robert E. Owen shows that the document at issue in this case is classified SECRET. Mr. Owen concluded: that "the withheld material remains classified at the SECRET level under Executive Order 12065. The release of this document could reasonably be expected to cause serious damage to the national

I/ The Court issued an order of July 12, 1978 granting and denying in part summary judgment for the CIA (attached as Exhibit 3). On July 20, 1978, plaintiff moved for voluntary dismissal with prejudice (attached as Exhibit 4). On July 28, 1978, the Court entered an order granting plaintiff's motion and vacated the order of July 12, 1978 (attached as Exhibit 5). Defendant's subsequent motion for clarification, and plaintiff's motion for reinstatement of the July 12, 1978 order, were denied without explanation by order of September 19, 1978 (attached as Exhibit 6).

security in terms of disrupting foreign relations of the United States and in disclosing information concerning United States intelligence activities, sources and methods. Thus, the

document remains exempt from release pursuant to FOIA exemption (b)(1).

The CIA's affidavits concerning the classification of this document at issue are entitled to "substantial weight." Our Circuit Court in Adele Halkin v. Helms, supra, Nos. 77-1922 and 77-1923 (D.C. Cir. June 16, 1978) stated at 15:

We note that in the analogous context of the national security exemption in the Freedom of Information Act courts should accord "substantial weight" to the affidavit of the agency. S. REP. NO. 1200, 93d Cong., 2d Sess. 12 (1974) (Conference Report); 120 Cong. Rec. 36,870 (1974) (remarks of Sen. Muskie); Goland v. CIA, No. U.S. App. D.C. F.2d _____, No. 76-1800 Slip Op. at 20 n.64 (May 23, 1978); Weissman v. CIA, U.S. App. D.C. _____, 565 F.2d 692, 697 & n.10 (1977).

Conclusion

Defendant's motion to dismiss should be granted. The document at issue has been properly withheld from public view.

Respectfully submitted,

EARL J. SILBERT
United States Attorney

ROYCE C. LAMBERTH
Assistant United States Attorney

LAWRENCE T. BENNETT
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK A. ALLEN,

Plaintiff,

v.

Civil Action No. 78-1743

CENTRAL INTELLIGENCE AGENCY,
et al.,

AFFIDAVIT

Defendants.

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

1. I am the Information Review Officer for the Directorate of Operations (DO) of the Central Intelligence Agency (CIA). My responsibilities include the review of the DO documents which are the object of Freedom of Information Act (FOIA) and/or Privacy Act requests to and litigation against the CIA, to insure that determinations made regarding the disposition of such documents are proper. I am authorized in accordance with sections 1-201 and 1-204 of Executive Order 12065 to make original classification determinations up through TOP SECRET. The statements made herein are based upon my knowledge, upon information made available to me in my official capacity, upon advice and counsel from the CIA Office of General Counsel and upon conclusions reached in accordance therewith.

2. Through my official duties, I have become acquainted with the FOIA request originated by plaintiff for CIA Document No. 509-803 which is at issue in the above-captioned litigation. Plaintiff's identification of the document was possible as a result of the document having been involved in an earlier

instance of FOIA litigation, in Fensterwald v. CIA, USDC, D.C., Civil Action No. 75-0897. In that instance the document was withheld in its entirety as indicated on page 127 of the Document Disposition Index prepared in that litigation. Page 127 is attached hereto designated Attachment A. The document was withheld pursuant to FOIA exemptions (b) (1), (b) (2) and (b) (3). A copy of the Court's findings regarding CIA invocation of the FOIA exemptions is attached as Attachment C. Plaintiff's letter dated 24 July 1978 initiating his FOIA request is attached as Attachment D. Plaintiff was advised by CIA in a letter dated 8 August 1978 that the document requested was denied pursuant to FOIA exemptions. A copy of the letter is attached and identified as Attachment E. By letter dated 9 August 1978, plaintiff appealed the CIA determination regarding Document No. 509-803. A copy of plaintiff's appeal letter is attached as Attachment F. Plaintiff filed his Complaint in this suit on 18 September 1978.

3. The affidavit of my predecessor as Information Review Officer for the Directorate of Operations of the Central Intelligence Agency, Mr. Charles A. Briggs, is attached identified as Attachment B and is hereby incorporated and made a part hereof by reference. Mr. Briggs' affidavit sets forth the CIA rationale for withholding documents or portions thereof pursuant to various FOIA exemptions. Document No. 509-803 was one of the documents dealt with in the earlier litigation. The circumstances which warranted the FOIA exemption determination have not changed since the time of the original determinations with one exception. The executive order in effect at the time of the Fensterwald litigation, Executive Order 11652, was replaced, effective 1 December 1978, by Executive Order 12065. I have reviewed

Document No. 509-803 and the classification determinations made with regard to it. I conclude that the withheld material remains classified at the SECRET level under Executive Order 12065. The release of this document could reasonably be expected to cause serious damage to the national security in terms of disrupting foreign relations of the United States and in disclosing information concerning United States intelligence activities, sources and methods. Thus, the document remains exempt from release pursuant to FOIA exemption (b) (1).

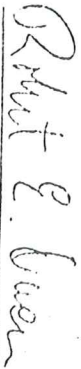
4. Executive Order 12065 provides more stringent standards for classifying information than the Order it replaced. At a minimum, under the new Order, information may not be classified unless its unauthorized disclosure could reasonably be expected to cause identifiable damage to the national security. In addition, only certain categories of information may be considered for classification. These categories include information pertaining to intelligence activities, sources or methods and information concerning foreign relations or foreign activities of the United States. With respect to withheld information for which FOIA exemption (b) (1) has been asserted, I have reviewed the determinations in light of the criteria of the new Order and have determined that the information meets the more stringent standards for classification set forth in Executive Order 12065 and falls within the requisite categories of information set forth in that Order.

5. I have reviewed the document in issue pursuant to section 3-303 of the new Executive Order which provides:

It is presumed that information which continues to meet the classification requirements in section 1-3 requires continued protection. In some cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head, a senior agency official with responsibility for processing Freedom of Information Act requests or Mandatory Review requests under this Order, an official with TOP SECRET classification authority, or the Archivist of the United States in the case of materials covered in section 3-503. That official will determine whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

The CIA has issued an Agency regulation implementing this section (see Attachment G) which was based upon the advisory letter of Mr. Zbigniew Brzezinski, Assistant to the President for National Security Affairs (see Attachment H). I have reviewed the document withheld in this case to determine if there are any circumstances which would require that a balance be made to test whether public interest in continued protection of this properly classified information is outweighed by the public interest in disclosure. I have determined that the requisite circumstances do not exist.

6. As indicated above, the document at issue remains properly classified and the circumstances warranting the FOIA exemptions justifying withholding the document in its entirety pursuant to FOIA exemptions (b) (1), (b) (2) and (b) (3), remain applicable and the document has therefore been withheld.


Robert E. Owen

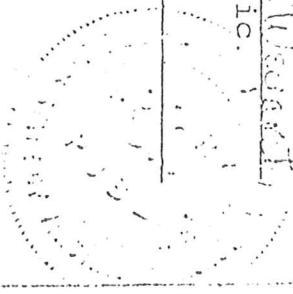
COMMONWEALTH OF VIRGINIA)
)
COUNTY OF FAIRFAX)

ss.

Subscribed and sworn to before me this 9th day of
January 1979.

Deborah M. Woodard
Notary Public.

My commission expires: 17 April 1982



Document No.

Date

No. of Pages

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).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BERNARD FENSTERWALD, JR., :

Plaintiff, :

v. :

Civil Action No. 75-897

U.S. CENTRAL INTELLIGENCE AGENCY, :

Defendant. :

AFFIDAVIT

Charles A. Briggs, 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 Directorate of Operations documents which are the object of Freedom of Information Act (FOIA) and Privacy Act requests to and litigation against the CIA. I am in Grade GS-18 and possess Top Secret classification authority. 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 FOIA request submitted to the CIA by the plaintiff which is the basis for this litigation. As set forth in the affidavit of Gene F. Wilson, Information and Privacy Coordinator for the CIA, filed herewith, 1,363 documents were recovered and reviewed as set forth in Mr. Wilson's affidavit at paragraph 18 in response to plaintiff's request. From the total number of documents, I have made determinations regarding the disposition of 1,264 documents which were primarily the responsibility of the Directorate of Operations. A listing of

ATTACHED B

the individual documents involved is presented below. My disposition determinations are recorded in the Document Disposition Index mentioned in Wilson's affidavit and therein identified as Exhibit Q. I have determined that information withheld or denied may not be released:

- (a) because it is currently and properly classified pursuant to Executive Order 11652 and is thus exempt from disclosure pursuant to the Freedom of Information Act exemption (b) (1); and/or,
- (b) because the information contained therein reveals intelligence sources and methods in need of continued protection and is thus exempt from disclosure pursuant to Freedom of Information Act exemption (b) (3); and/or,
- (c) because of the need to protect information concerning CIA organization, procedures, names, official titles and numbers of personnel employed by the Agency and is thus exempt from disclosure pursuant to Freedom of Information Act exemption (b) (3); and/or,
- (d) because the information is related solely to internal personnel practices, in this case related solely to Agency internal filing instructions, and thus exempt from disclosure pursuant to Freedom of Information Act exemption (b) (2); and/or,
- (e) because inter-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Agency are exempt from disclosure under Freedom of Information Act exemption (b) (5); and/or,

(f) because the release of certain information would constitute a clearly unwarranted invasion of the personal privacy of individuals identified in these documents and is thus exempt from disclosure pursuant to Freedom of Information Act exemption (b) (6); and/or,

(g) because the information reveals the name or identity of Federal Law Enforcement personnel which could result in endangering the life or physical safety of such law enforcement personnel and is thus exempt from disclosure pursuant to Freedom of Information Act exemption (b) (7) (F) which is asserted on behalf of and at the request of the FBI; and/or,

(h) because the information reveals the identity of a confidential source of the FBI which is exempt from disclosure pursuant to exemption (b) (7) (D) which is asserted on behalf of and at the request of the FBI.

3. The CIA documents which are the object of this litigation have been consecutively numbered for the purposes of this litigation. They have been included on the Document Disposition Index filed as Exhibit Q. The documents on which I made the FOIA determinations are those numbered 1-1-B through 1237-499-A, 1246-1007, 1250-1010-A, 1251-1011 through 1255-1015, 1268-464-A, 1270-1030, 1274-1026, 1289-1019 through 1292-1016, 1308-475-A, 1313-1036-C, 1314-1036-1316-475-D, 1320-484, 1323-1040, 1324-1041, 1326-1042, 1327-1042-A, 1330-481331-1044, 1334-1047 and 1345-1057.

4. The Document Disposition Index specifies, as to each item withheld, the type or category of information contained in the withheld item and describes the withheld material in as much detail as is possible without revealing the very information sought to be protected. Also the Document Disposition Index sets forth the FOIA exemptions as to each item withheld. Detailed justifications for withholding each type or category of information withheld (such as foreign liaison, CIA staff employees' names, etc.) are set forth below.

5. I have determined that the portions deleted and the documents denied for which classification is asserted, are currently and properly classified because their release could cause damage to the national security in terms of disrupting foreign relations, compromising complex cryptological and communications intelligence systems and revelation of sensitive intelligence operations. Each such document bears the appropriate markings on its face to evidence its classified status.

6. 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. 535, 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 "The 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) or 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 classification 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.

7. Documents containing information received from foreign liaison services, or which confirm the existence of a liaison arrangement with the foreign intelligence or security service must be withheld. One of the more significant sources of foreign intelligence information for the United States is foreign liaison services. Foreign services which share their foreign intelligence collection product with the CIA have frequently proven of critical value to the United States. In many areas of the world in which United States citizens are not welcome, intelligence sources available to friendly foreign intelligence services have proven invaluable. Such services frequently constitute an effective arm of United States intelligence, to the extent that they can accomplish

the objectives of United States intelligence in a manner in which United States intelligence cannot function. Documents which contain information supplied by a foreign intelligence service, or which reveal the existence and possibly the nature of an intelligence liaison arrangement with an identifiable foreign governmental component, must remain classified in accordance with the requirements of that foreign service and any agreement established with that Government or service. Any unauthorized release or other incident that suggested or proved to the foreign service that the CIA was unwilling or unable to provide the kind of protection that service expected its intelligence information would be provided, could cause potentially serious damage to the liaison relationship and consequently to United States national security interests. If liaison agreement would obviously be in jeopardy. The intelligence operations of the foreign service that produced the information would be put in hazard and the willingness of that service to trust CIA with further intelligence secrets would also be in hazard. Such incidents can and have led to a situation in which a foreign intelligence service no longer passed secret intelligence information to the CIA or to other intelligence elements of the United States Government. Some such developments have caused serious strains on relations between governments.

8. Cooperation by the intelligence services of friendly countries with the intelligence and security services of the United States continues only on the basis of an understanding that such liaison relationships are conducted with absolute confidentiality. In the first instance, it must be recognized that

most governments, unlike that of the United States, do not officially acknowledge the existence of certain intelligence and internal security services, much less the scope of their activities, the extent of their liaison with other countries and the type of information obtained by them. For the United States to release official documents which would evidence the existence and scope of activity of foreign intelligence services, without the permission of their governments, would seriously strain relations between our government and theirs, in addition to sharply curtailing or eliminating cooperations between the respective intelligence services, which would have a serious negative impact on United States intelligence capabilities.

9. In the event a friendly foreign liaison service provides the means by which an effective intelligence operation can be conducted against a third country which is hostile to the United States, the potential advantage to the United States is obvious. Should the United States prove unable to protect the secret of such an operation, the advantage would just as obviously soon be lost. At a minimum, the target country would act to nullify the operation. The level of retribution served on the friendly foreign country by the target country could be severe. The opportunities to conduct any further such operations against the target country would most likely be terminated along with the willingness of the friendly foreign country to offer any further such collaboration. Should the developments receive some public attention, which they frequently do, other countries which might have been inclined to cooperate with the United States in similar endeavors would have grounds for misgivings and doubts about the wisdom of such cooperation. The loss of such unrealized opportunities are difficult to measure, but no less real.

10. With regard to the existence of an intelligence liaison arrangement with a government that could not reasonably be expected to cooperate in any open fashion with the United States, the dangers inherent in the release of documents evidencing such an arrangement are even more critical. Certain governments find it in their interest to maintain some link with the government of the United States even though their official posture vis-a-vis the United States is distinctly hostile. On occasion, the respective intelligence services can provide such a link. If the understanding of secrecy cannot be honored, liaison of this nature becomes impossible and an extremely valuable link is lost.

11. Intelligence liaison arrangements frequently survive many changes of government; occasionally changes which are of a drastic political ideological nature. The cement of survival for such arrangements is found principally in United States willingness and ability to honor its commitment to confidentiality. Under such circumstances, the professional discipline of an intelligence service may prove more important to maintaining an effective liaison arrangement than political compatibility. In such cases, the age of shared secrets may prove more important than their substance. The fact that old secrets are protected with the same dedication as the newer ones, adds to the confidence necessary to such arrangements. Unofficial rumors or allegations about the existence of such liaison arrangements can do great damage, but the damage is usually not nearly absolute when the admission is official, whether accidental or intentional.

12. If the government from which certain information is received is recognizable from the face of the document itself, the danger remains that the originating government itself may recognize information released in the public domain as information it supplied in confidence to American intelligence. Thereafter, the originating government would be reluctant to trust our intelligence community with other sensitive information. There are, obviously, a variety of reasons why United States intelligence efforts must be disciplined and organized to protect secret information received from cooperative foreign intelligence services and their governments.

13. Information pertaining to foreign government liaison relationships is also exempt from disclosure under exemption (b) (3) of the FOIA based upon the responsibility of the the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure (50 U.S.C. 403(d)(3)).

14. Similar reasons apply to the withholding of information which reveals the existence of a CIA station in a specific country or city abroad or which discloses the fact that CIA conducts intelligence operations in any given country abroad. A CIA presence abroad, even in a friendly country, is likely to be condoned only as long as it does not have to be officially acknowledged. While it is generally known and widely accepted that nations conduct secret intelligence operations against other nations, traditionally, and for practical reasons in the conduct of foreign affairs, no nation officially acknowledges that it engages in such activities against specific foreign countries.

While all nations are, of course, aware that they may be the targets of clandestine intelligence operations and may even unofficially acknowledge this fact, no government is likely to be willing to tolerate an official acknowledgement by another government that intelligence operations have been conducted against it. When such official acknowledgement does, however occur, the nation that had been the target of such an operation will take some appropriate action in its defense. The nature of the action taken by the offended nation will be in proportion to the perceived offense.

15. 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 of 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.

16. A primary function of the CIA is the collection of foreign intelligence. Foreign intelligence includes information concerning the capabilities, intentions and activities of foreign powers, organizations or their agents. A corollary responsibility is the collection of foreign counter-intelligence, designed to protect the United States Government's foreign intelligence activities and other national security secrets from disclosure

or penetration. As defined in Executive Order 11965 (41 Fed. Reg. 7702 (February 19, 1976)), counterintelligence means "information concerning the protection of foreign intelligence, or national security information and its collection from detection or disclosure." By that same Order, the CIA is specifically charged with the responsibility to conduct foreign counterintelligence activities outside the United States and to protect the security of its installation activities, information and personnel. The statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods includes the protection of counterintelligence sources and methods.

17. Information related to intelligence sources and methods as described herein is withheld under the authority of exemption (b) (3) of the Freedom of Information Act as specifically exempted from disclosure by the statutory provision that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods (50 U.S.C. 403(d) (3) and 50 U.S.C. 403g). Such information is also currently and properly classified pursuant to the criteria of Executive Order 11652 (and thus exempted under exemption (b) (1)) to the extent that it reveals intelligence sources and methods intelligence or counterintelligence operations, would prejudice the prospects for success of such operations in the future, or would place a person's life in jeopardy.

18. 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 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 the aid of such individuals can be enlisted in the first place and it is only through confidence in the ability to maintain extreme secrecy that such individuals can be persuaded to remain cooperative.

19. 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.

20. Cryptonyms and pseudonyms are used as defense mechanisms against the unauthorized disclosure of covert activities, the identities of intelligence sources or the names of CIA employees. They are assumed names or code words used as substitutes for true names or used to denote particular projects, activities or types of information. A cryptonym or pseudonym carries a great deal of meaning for those who are able to fit it into the proper cognitive framework. For example, knowing that a particular foreign government official stands behind the mask of a cryptonym permits the reader of a message to assess the value of the information received. Also, because the significance of information communicated may very well be a mystery to those who do not know the scope or nature of a particular project, use of cryptonyms instead of true names to identify a project is quite important as a matter of security. If a document is lost or stolen, the use of cryptonyms and pseudonyms prevents the breach of security from being more serious than it might otherwise be. However, release of cryptonyms or pseudonyms in the aggregate make it possible to fit disparate pieces together and divine what source stands behind the cryptonym or pseudonym or the nature and purpose of the project. In some instances, the factual setting within which the cryptonyms or pseudonyms appear is of such a descriptive nature that a collection of such documents could

reveal to the knowledgeable reader the true identity of persons or activities protected. For these reasons, cryptonyms and pseudonyms which conceal intelligence sources and methods have been denied under the authority of exemptions (b) (1) and (b) (3) of the Freedom of Information Act.

21. As a further measure taken to protect intelligence sources and methods and pursuant to §6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. §403g, which provides that the CIA is exempt from the provision of law requiring the disclosure of organizational data or the names of its personnel names and identities of organizational components of the CIA were deleted in certain documents. Organizational data was deleted to prevent detailed knowledge of CIA structure and procedures from being available as a tool for hostile penetration or manipulation. The names of CIA employees were deleted since the Agency may not disclose the identity and affiliation of a substantial number of those employees who do not come into public view in the course of their duties. Such employees may have in the past served under cover or in sensitive positions, are doing so now, or may do so in the future. The result of such a revelation could well be used to compromise past, current or future intelligence operations, to impair the usefulness of such an individual to the Agency and/or to place their lives or the lives of members of their families in jeopardy. To publicly identify a specific individual as an employee of the CIA is, in this volatile world, an invitation for action inimical to our interest. Accordingly, pursuant to §6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. §403g and exemption (b) (3) of the Freedom of Information Act, such information is exempt from disclosure.

22. An additional consideration exists when the revelation of the identity and affiliation of a specific employee would result in the disruption of foreign relations and/or the revelation of sensitive or significant foreign intelligence operations. For instance, employees who have in the past or are currently serving under cover in a foreign country are not only significantly more vulnerable to violence, but the revelation that such a specific individual was in fact a CIA employee could well result in diplomatic repercussions and prejudice foreign intelligence operations. Similar considerations apply for domestic employees under cover who participate in sensitive or significant intelligence operations such as the recruitment of aliens, debriefings of defectors, etc. Accordingly, such information is classified pursuant to Executive Order 11652 and is, therefore, also exempt from disclosure pursuant to exemption (b) (1) of the Freedom of Information Act.

23. Classification markings have been removed from all documents released to the plaintiff to indicate their unclassified status. Additionally, certain routing instructions which reveal CIA organizational data or methods of disseminating information throughout the intelligence community have been deleted pursuant to exemption (b) (3) of the Freedom of Information Act based on 50 U.S.C. 403(d) (3) and 403g.

24. Filing instructions and file numbers have been deleted from several documents in order to permit the release of these documents, or portions thereof to the plaintiff. Such markings, while an indispensable tool for managing an information retrieving system, are of little or no value to the public at large and are exempt from disclosure under exemption (b) (2) of the Freedom of Information Act.

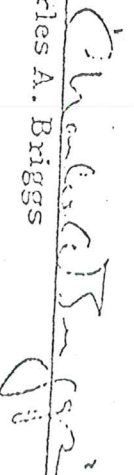
25. Certain information has also been withheld inasmuch as the release would result in a clearly unwarranted invasion of personal privacy of the persons named or otherwise identified in the document. In the instant review, such deletions or denials were limited to United States citizens. In most instances, their relationship to the investigation was incidental.

For example, a number of people's names appear because their names were similar to but not identical with persons whose names figured prominently in the investigation. Frequently, information deleted included highly personal information, often of a potentially embarrassing nature. In other instances, individuals were mentioned because of their involvement in some incident or activity which suggested the need for further investigation so that, at a minimum, they would be eliminated from the category of suspect. In such instances, when further investigation, file research or other form of checking established that the individual was innocent of any involvement in the assassination, the names of the individuals were withheld. In other instances in which names were deleted, the circumstances are explained in individual document comments of the index. In general, it might be stated the fact that an individual is the subject of a CIA file or is mentioned in a record maintained by CIA is easily misunderstood by the general public although the inclusion of such a person's name in CIA records does not necessarily imply such individuals are viewed in any negative context. In fact, the occurrence be occasioned by very innocuous reasons. Accordingly, the identity of individuals who are subjects of CIA files or are mentioned in CIA records

are not generally disclosed under the authority of exemption (b) (6) on the grounds that disclosure would constitute a clearly unwarranted invasion of an individual's personal privacy and could result in embarrassment to the individual or his family.

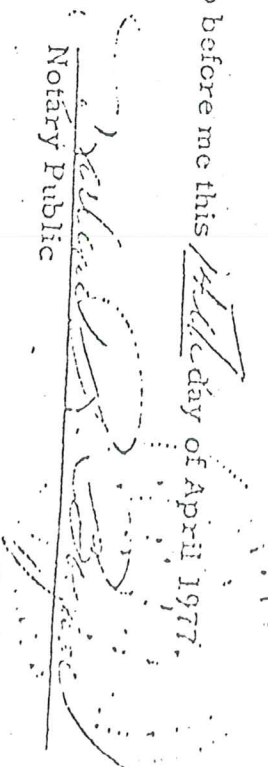
26. In certain documents, individually identified on the Document Disposition Index, the names of Federal Law Enforcement officers have been deleted so as to avoid any chance of possibly endangering the lives or physical safety of such officers as authorized under exemption (b) (7) (F) on behalf of the agencies involved. In one document, a confidential informant of the FBI is identified and that informant's identity was withheld on behalf of and at the request of the FBI under the authority of exemption (b) (7) (D).

27. There were three instances in which information was withheld which contained predecisional advisory opinions. The material withheld discussed matters on which decisions were finally made, but without the assistance of the line of reasoning offered in the material, nor did the ultimate conclusions and decisions made by the Agency resemble, in any way, the conclusions offered in this material. The deletions or denials made in these three instances were under the authority of exemption (b) (5) and are so identified in the comments on the individual documents in the Document Disposition Index.


Charles A. Briggs

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this 11th day of April 1977.


Notary Public

My commission expires:

My Commission Expires March 11, 1980