

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GARY SHAW,)
)
 Plaintiff,)
)
 v.) Civil Action No. 80-1056
)
 DEPARTMENT OF STATE, et al.,)
)
 Defendants.)
 _____)

AFFIDAVIT

GERALD L. LIEBENAU, 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 the 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. 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 requests of the plaintiff and the documents that were retrieved from the records of the CIA and which were reviewed for releasability by the DO in response to those requests. As set forth in the accompanying affidavit of Mr. John E. Bacon, Information and Privacy Coordinator for the CIA, incorporated herein by reference and made a part hereof, there

were 207 CIA documents which were reviewed in the DO and regarding which I am responsible for the FOIA determinations as set forth in this affidavit and accompanying index. By reviewing the documents, I determined that in those instances in which material must be withheld, that material may not be released because:

a. it is currently and properly classified pursuant to Executive Order 12065 as information requiring continued protection against unauthorized disclosure and, thus, exempt from release pursuant to FOIA exemption (b)(1);

b. the information reveals facts about intelligence sources and methods which the Director of Central Intelligence is responsible for protecting against unauthorized disclosure as set forth in 50 U.S.C. §403(d)(3), and which is, thus, exempt from release pursuant to FOIA exemption (b)(3);

c. the information reveals facts about CIA organization, functions, names, official titles or numbers of personnel employed, all of which are exempt from disclosure pursuant to 50 U.S.C. §403g, and which is, thus, exempt from release pursuant to FOIA exemption (b)(3); and

d. the information reveals details of the private lives of individuals in a manner which, should the information be released, would constitute a clearly unwarranted invasion of personal privacy of the individual and is, thus, exempt from release pursuant to FOIA exemption (b)(6).

3. The purpose of this affidavit is to explain why certain information, contained in the documents retrieved in response to the plaintiff's request, is exempt from disclosure and what FOIA exemptions apply to the unreleased information. The affidavit and accompanying index will also provide a description of the information withheld.

4. The documents retrieved in response to plaintiff's FOIA request generally concern the suspected criminal activities of several individuals. Although CIA has no police powers, the Agency provides intelligence assistance to various U.S. law enforcement agencies, including the Drug Enforcement Agency (DEA) and the Customs Service, in foreign countries. The records in this case reflect the efforts of the CIA in collaboration with U.S. law enforcement agencies and with a number of foreign intelligence and security services to establish the location of several foreign nationals in foreign countries and to confirm the identities of such persons. The individuals were of interest because of their alleged involvement in bringing narcotics into the United States illegally.

5. The review of an intelligence agency's records for possible release under the FOIA is typically a difficult and troubled endeavor. A major responsibility of the CIA is to protect against the unauthorized disclosure of United States secrets. The secrets the CIA is responsible for are

generally those which relate directly to the nation's security. While the review of such documents in response to an FOIA request must ensure that all possibly releasable information is disclosed, the review must also ensure that all information requiring continued protection is not disclosed. The reviewer must, therefore, be able to recognize any secret information contained in each document. This entails a substantive familiarity with the circumstances in which a document was originated. Moreover, the document cannot be reviewed in isolation. It must also be examined in terms of the sequence of communications of which it is a part. The review must also encompass related information which may not be contained in the sequence of communications but which may have become part of the public record concerning the same events and circumstances. The unintentional disclosure of secrets is frequently the consequence of piecemeal disclosures, many of which might have been individually innocent of real meaning, but which cumulatively may disclose the real secret. Each document is, thus, capable of making a disclosure of much greater significance than is evident from the face of the individual document.

6. Most of the substance found in records responsive to the plaintiff's request was determined, not surprisingly, to be exempt from disclosure. In every case in which a record was found to have a mixture of exempt and releasable information, the exempt information was deleted and the intelligible remainder of the document was released.

Classification

7. The authority of a CIA official to classify documents is derived from a succession of Executive Orders, the most recent of which is Executive Order 12065 (43 Fed. Reg. 28949) which became effective on 1 December 1978. That Order defines classified information as follows:

§6-102. 'Classified information' means information or material herein collectively termed information, that is owned by, produced for or by, or under the control of the United States Government, and that has been determined pursuant to this Order or prior Orders to require protection against unauthorized disclosure, and that is so designated.

The documents which have been withheld, in part or in entirety, because of the classified information contained in them were reviewed under the criteria established in the new Executive Order 12065. As a senior CIA official and pursuant to a written delegation of authority from the Director of Central Intelligence under sections 1-201 and 1-204 of Executive Order 12065, I hold original classification authority at the Top Secret level and, therefore, am authorized to make classification reviews. In reviewing the classification determinations, I have determined that those portions of the material which are currently and properly classified contain information, the disclosure of which would at least cause identifiable damage to the national security interests of the United States. The kinds of classified information contained in the various pertinent documents fall in one or more of the following categories provided in Executive Order 12065:

a. foreign government information,
1-301(b);

b. intelligence activities, sources and
methods, 1-301(c); and

c. foreign relations or foreign activi-
ties of the United States, 1-301(d).

For these reasons, such information satisfies the substantive classification requirements of Executive Order 12065 (§1-301 and 1-302) and, thus, maintains its classified status. In every case in which I determined a document to be currently and properly classified, the document is marked to show the required data recording the classification review. That includes the identity of the classification reviewing officer, the date or event for the next periodic declassification review and the level of classification.

8. In a number of instances, the information which compelled the classification of the document has been removed or declassified to create a declassified document which could be released pursuant to provisions of the FOIA. In those instances, the classification markings and other information control markings which were related to restricted access arrangements, for certain categories of classified information, have been crossed out in the process of creating a declassified version of the document for release.

9. Information determined to be currently and properly classified has been withheld from release pursuant to exemption (b)(1) of the FOIA which applies to matters 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.

Intelligence Sources

10. Information which reveals intelligence sources in need of continued protection must be withheld. Intelligence sources 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. The American businessman, for example, who is willing to share 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, would suffer serious embarrassment and loss of a business in foreign countries for himself or his company should the fact of such collaboration be publicized. In the case of a foreign national who is willing to act as a foreign agent or source for American intelligence and who is exposed, the consequences are frequently swift and sure. That individual faces retribution, frequently imprisonment and sometimes death. Such individuals understandably insist on a pledge of secrecy before agreeing to cooperate with American intelligence. It is only with such a pledge of secrecy that such individuals can be persuaded to remain cooperative.

11. Intelligence sources who remain within their society are at all times subject to retribution if and when they are discovered as informants. This is true even for sources who are no longer active. In many cases, the very nature of the information provided by a source tends to reveal the source because of the limited number of individuals having access to the information. Under these circumstances, the informant may

be perpetually vulnerable to discovery by anyone having access to his reporting. Exposure 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 in determining how or when the information is publicly released. Such a guarantee must also obviously go beyond arbitrarily established time limits.

12. Intelligence sources who provide intelligence on the activities of narcotics traffickers are particularly vulnerable to exposure. Narcotics traffickers take great pains to insure that the smallest possible number of people know enough about their activities to be able to damage them by exposing them to law enforcement authorities. Thus anyone who does inform on them is immediately vulnerable to retaliation when action is taken by law enforcement agencies based on such reporting. The retaliation is usually violent and sometimes lethal.

Foreign Intelligence and Security Services

13. Foreign intelligence and security services frequently collaborate with the CIA. To the extent that such services share their intelligence information with the CIA, they are intelligence sources of the CIA. Liaison arrangements between CIA and foreign government services usually include a reciprocal understanding of confidentiality. Such arrangements include provisions to protect shared intelligence information against unauthorized disclosure. Failure to abide by such arrangements

can cause a disruption of a productive liaison arrangement and in fact can produce the termination of some such arrangements. On principle such arrangements warrant protection. Some of the most significant sources of foreign intelligence information for the United States are foreign intelligence services. In many areas of the world in which United States citizens are not welcome, intelligence sources available to friendly foreign intelligence services have proven an invaluable substitute. Such services frequently constitute an effective arm of United States intelligence when they can accomplish the objectives of United States intelligence in a manner or an area 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 identified foreign government component, must remain classified in accordance with the liaison arrangements with the foreign service and any arrangement 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 with regard to its intelligence information could cause potentially serious damage to the liaison relationship and, consequently, to United States national security interests. The intelligence operations and the intelligence sources 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 put in hazard.

14. CIA conducts liaison with many foreign intelligence and security services. The utility of such activities to the United States is manifest. Damage to such relations that might result from the unauthorized disclosure of shared intelligence information concerning international narcotics trafficking could be severe. The flow of needed information could be cut either as a negative reaction of the service or possibly because the intelligence sources were no longer reporting, or both. Indeed, to the extent that the foreign services whose information is contained in many of the CIA records involved in this case also provide intelligence information and services on matters other than narcotics trafficking, the damage possible to the liaison, if there were an unauthorized disclosure, would be broader than might be expected from the face of the documents.

15. Intelligence liaison arrangements frequently survive changes of government, occasionally even changes which are the result of political upheavals. The cement of survival for such liaison arrangements is found principally in the demonstrated willingness and ability of the United States 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 content. 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 more nearly absolute when the admission is official, whether accidental or intentional.

16. Whether or not information received from a foreign government would be classified if obtained under other circumstances is not necessarily a determining factor regarding its classification. Even if the government from which certain information is received is not 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 information it regards as sensitive. 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. The necessity of providing such protection to foreign liaison information, as well as confidential sources, is now recognized in Executive Order 12065 in §1-303 which states:

Unauthorized disclosure of foreign government information or the identity of a confidential foreign source is presumed to cause at least identifiable damage to the national security.

Intelligence Methods

17. Intelligence methods must also be protected. Secret intelligence methods are not likely to work once known to those against whom they are used. This is true whether the intelligence methods are those used in the collection of intelligence information or in the analysis and evaluation of intelligence

information for the purpose of preparing intelligence studies or estimates. Secret information collection techniques or devices can be as vital to intelligence agencies as secret weapons can be to military forces. In some situations, intelligence methods which may no longer in themselves be secret are used in circumstances which require secrecy. Then it is the fact of their use that must be protected. For example, it is no secret that CIA maintains liaison with foreign intelligence and security services. To acknowledge, however, that CIA maintains a liaison arrangement with a specific intelligence or security service is to acknowledge an intelligence method which the CIA may not do without risking damage to the arrangement. The fact that CIA uses "cover" arrangements for many of its personnel abroad is no longer a secret. However, which officers are under cover, or in what countries CIA uses a specific cover, are intelligence methods requiring continued protection. The cover provides the protection of a camouflage which enables the officers to pursue their official duties with less chance of discovery by hostile intelligence and security services. Intelligence methods protected against unauthorized disclosure are not limited to those used to collect intelligence information. A variety of intelligence methods, including methods of information storage, processing, manipulation, collation and retrieval are unique to intelligence analysis and estimating activities. Likewise, some information processing programs are such an integral part of the information collection process and so revealing of the nature of the collection activity that data concerning the information processing program must receive protection equal

to that given to the information about the collection activity. It follows that the procedures 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 by informed hostile interests which might seek to penetrate, mislead and negate the intelligence efforts of the United States. Much of the material withheld in the documents in the instant case is withheld to protect CIA intelligence methods. Many of the documents discuss intelligence operational tactics and capabilities in various foreign countries. Such discussions not only disclose the nature of intelligence tactics CIA uses in narcotics intelligence operations, including handling liaison relationships with foreign services, but also the CIA's operational capabilities become evident, as do their strengths and weaknesses.

CIA Stations Abroad

18. 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 must also be withheld to protect against unauthorized disclosure. 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, nations rarely officially acknowledge engaging 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 acknowledgment by another government that intelligence operations have been conducted against it. When such official acknowledgment does, however, occur, the nation that has been the target of such an operation will probably 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.

Cryptonyms and Pseudonyms

19. Cryptonyms and pseudonyms are intelligence methods used to protect against the unauthorized disclosure of intelligence activities and identities of intelligence sources. Cryptonyms and pseudonyms are code words or pen names used to conceal the true identity of some thing or some person. Such devices are used in intelligence documents as an additional measure of security against the unintended event of an intelligence document coming into the possession of a hostile foreign power. A cryptonym or a 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 not only to assess the significance of the information but also to take action to negate the continued ability of the official as an intelligence source. Thus 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. The release of only a few documents would not necessarily create a serious likelihood of security damage;

however, the release of cryptonyms and pseudonyms in the aggregate could make it possible to fit disparate pieces together and discover the source's identity or the nature and purpose of the project. In some such circumstances, the accumulation of data in the factual settings within which the cryptonyms and pseudonyms appear is of such a descriptive nature that a collection of such documents could reveal to the knowledgeable reader the true identity of the persons and activities protected. Consequently, cryptonyms and pseudonyms are exempt from release to protect against unauthorized disclosure of intelligence sources and methods.

20. The categories of information described in paragraphs 9 through 19, infra, relate to intelligence sources and methods and are, thus, withheld pursuant to FOIA exemption (b)(3) which relates to matters that are:

(3) specifically exempted from disclosure by statute (other than 552(b) 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.

50 U.S.C. §403(d)(3) provides that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure. This statute, thus, invokes FOIA exemption (b)(3) when such information is found in responsive documents. In those instances when the nature of the information is such that the unauthorized disclosure could reasonably be expected to cause at least identifiable damage to national security

interests pursuant to Executive Order 12065, the information is also withheld pursuant to FOIA exemption (b)(1).

CIA Staff Employees and Organizational Components

21. As a further measure taken to protect intelligence sources and methods pursuant to section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. §403g, provides that the CIA is exempt from the provisions of any other law requiring the disclosure of information regarding the organization, functions, names, official titles, salaries or numbers of personnel employed by the Agency. Consequently, a number of CIA staff employees' names and other personal identifiers of individuals, who have not been previously acknowledged as CIA staff employees, have been deleted. Additionally, the titles or other organizational identifiers of a number of organizational components which have not been publicly acknowledged previously have also been deleted. Beyond the statutory justification for such withholdings there are additional reasons. Such data is deleted to prevent detailed knowledge of CIA structure and procedures from being available as a tool for hostile penetration or manipulation. The names of many 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. Many such employees have in the past served under cover or in sensitive positions, are doing so now or may do so in the future. The revelation of their affiliation with the CIA could well be used to compromise past, present or

future intelligence operations, to impair the usefulness of such individuals to the Agency and/or to place the lives of members of their families and the lives of intelligence sources they have worked with in jeopardy. Accordingly, to protect against the disclosure of the identity of CIA staff employees who have not been publicly acknowledged is consistent with 50 U.S.C. §403g. In those instances in which the disclosure of such information could also result in identifiable damage to the national security, the information is also withheld pursuant to FOIA exemption (b)(1).

Privacy

22. Certain information has been withheld to protect against a clearly unwarranted invasion of personal privacy that would occur if the information were publicly disclosed. Such withholdings were limited to information concerning people other than those named as the subject of plaintiff's FOIA requests. The withholdings were further limited to information alleging participation in or awareness of unlawful activity which was not proven in the text of the document. In all cases of such withheld information, the most innocuously derogatory information was of the kind suggesting social affiliation with individuals known to be involved in unlawful activity. In all cases of such withheld information, the predictable damage to the individuals' privacy, including the potential damage to the individuals' reputation and livelihood was weighed and balanced against the benefit to the general public that would flow from the release of the information.

In all cases in which such information was withheld, it was because of a determination that the damage to the individuals outweighed the benefit to the public.

23. The information described in paragraph 22, infra, relating to privacy considerations is withheld pursuant to FOIA exemption (b)(6) which relates to matters that are:

(6) personnel and medical files and similar files the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

24. Some information contained in the CIA documents involved in this case originated with other United States Government agencies. The information was coordinated with regard to its FOIA disposition with the originating agencies. This was done because the documents were classified and any declassification review must be done by the originating agency. In a number of instances the other agency information was determined to be currently exempt from release. The accompanying index identifies those documents, the FOIA exemptions claimed to withhold the information and the agency claiming the exemption. The claimed exemptions are further addressed in accompanying affidavits prepared by officers in the other originating agencies.

25. The problems involved in releasing some nonexempt information while insuring against the accidental disclosure of sensitive intelligence information in this case required some unusual measures. I mentioned earlier that an officer reviewing sensitive intelligence records for possible public disclosure must be conscious of matters and events which surround those set forth in the documents reviewed, to know

how that information, much of which may already be on the public record, in combination with information contained in a specific document may lead to or actually cause a disclosure which is unintended. Many of the documents in this case deal in intimate detail with experiences of the subjects of plaintiff's requests. Since any documents released under FOIA must be considered releases to the public, it must be assumed that even the subjects of these requests may eventually get access to the released documents as well as the explanations for the material withheld. Given that circumstance, the releasability determinations must take into account the personal experiences of the subjects of the FOIA requests in determining how much can be released without disclosing information that must continue to be protected. The documents in this case cover a time span of 1961 through 1975. The majority, however, concern 1972. The facts concerning the experiences of various individuals are quite detailed and probably memorable, e.g., being arrested on narcotics charges and interrogated by police organizations. Because of the common factual specificity and the nature of the exemption explanations required, the dates of documents withheld in entirety have not been given in the documents descriptions. To do so would be tantamount to giving the names of the foreign intelligence or security services which provided the information contained in the documents; information which is clearly exempt from FOIA release and which requires continued protection.

26. Plaintiff basically made three FOIA requests. He requested CIA records on Jean Souetre, also known as Michal Roux and also known as Michal Hertz. The responsive records

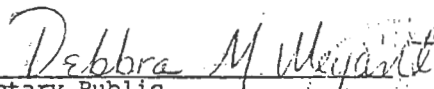
retrieved are those numbered 176 through 188. He requested CIA records on Michael Victor Mertz and Christian David. The responsive records are those numbered 1 through 175 and 189 through 207. He requested CIA records on Thomas Davis III, deceased. No records were found. The documents concerning Souetre fall in a time period of 1961 through 1963. The documents concerning Christian David fall in a time period of 1972 and 1973 with a few additional documents in 1975.

27. In the accompanying Document Disposition Index, made a part hereof by reference, the documents retrieved in response to the FOIA requests of the plaintiff are identified. The disposition of the documents pursuant to the FOIA is described. The nature of the substance withheld is identified and the relevant paragraphs of this affidavit are cited to identify the rationale of the various withholdings in each document.


GERALD L. LIEBENAU

COMMONWEALTH OF VIRGINIA)
) ss.
COUNTY OF FAIRFAX)

Subscribed and sworn to before me this 2nd day of ~~November~~ ^{December} 1980.


Notary Public

My commission expires: 17 April 1982