

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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THE NATIONAL SECURITY ARCHIVE)
FUND, INC.,)
)
Plaintiff,)
)
v.) No. 1:04CV01821 (RMC)
)
CENTRAL INTELLIGENCE)
AGENCY,)
)
Defendant.)
_____)

**DECLARATION OF MARTHA M. LUTZ
INFORMATION REVIEW OFFICER
CENTRAL INTELLIGENCE AGENCY**

I, MARTHA M. LUTZ, hereby declare and say:

1. I am the Information Review Officer (IRO) for the Director of Central Intelligence Area (DCI Area) of the Central Intelligence Agency (Agency). The DCI Area encompasses the Office of the Director of Central Intelligence, which includes the National Intelligence Council (NIC). I have held this position since January 19, 1999. I have held various administrative and professional positions within the Agency since 1989.

2. As IRO for the DCI Area, I am responsible for the final review of information that is originated by offices organized under the DCI Area or that otherwise concern DCI Area equities before such information is released outside

EXHIBIT 1

of the Agency. As part of my official duties, I ensure that determinations as to the release or withholding of information in Agency documents are proper. I also task offices organized under the DCI Area to conduct records searches in response to various requests for information reasonably likely to be maintained by the DCI Area.

3. As a senior CIA official and under a written delegation of authority pursuant to Executive Order 12958, as amended,¹ I hold original classification authority at the TOP SECRET level. Therefore, I am authorized to conduct classification reviews and to make original classification and declassification decisions.

4. I am familiar with the above-captioned litigation and the request for information made by the Plaintiff, National Security Archive Fund, Inc., (NSAF), to the Agency pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended. I make the following statements based upon my personal knowledge and information made available to me in my official capacity, and the conclusions I reached and the determinations I made in accordance therewith.

¹ On March 25, 2003, Executive Order 12958 was amended by Executive Order 13292, 68 Fed. Reg. 15315 (2003).

5. My purpose in submitting this declaration is to describe to the Court and to the Plaintiff, as fully as I may on the public record, the CIA's responses to the Plaintiff's FOIA request for the "2004 National Intelligence Estimate on Iraq" (hereinafter referred to as "the Estimate").

6. I have carefully conducted a line-by-line review of the Estimate to determine whether the Estimate, or any part of it, may be released. Following a careful review and consideration of the Estimate, as a whole, and on a line-by-line basis, I have determined that the Estimate must be protected from release in its entirety, on the basis of FOIA exemptions (b)(1), (b)(3), and (b)(5), and that no reasonably segregable, non-exempt portion of the document exists.

Procedural History

7. By letter dated September 16, 2004, NSAF wrote to the Agency and requested, pursuant to the FOIA, "the National Intelligence Estimate (NIE) prepared in July 2004 on Iraq." In addition, NSAF requested that the Agency expedite the processing of the FOIA request pursuant to 5 U.S.C. § 552(a)(6)(e) and waive "search and review fees as a representative of the news media."

8. By letter dated September 28, 2004, the Agency acknowledged receipt of NSAF's FOIA request, informed NSAF of the Agency's determinations to place NSAF in the "representative of the news media" fee category and to deny NSAF's request for expedited processing.

9. By letter dated October 4, 2004, NSAF reiterated its request that the Agency expedite the processing of the NSAF's FOIA request and alleged additional information in support of the request for expedited processing and in support of its FOIA request. On October 5, 2004, an NSAF representative contacted the Agency to request a status update on the Agency's processing of the NSAF's FOIA request. The Agency informed the NSAF representative that the Agency had denied the NSAF's request for expedited processing via the Agency's letter to the NSAF of 28 September 2004 but that the Agency did accept NSAF's FOIA request and was processing it in accordance with the Agency's standard procedures. By letter dated October 6, 2004, the Agency confirmed its denial of the NSAF's request for expedited processing.

10. On October 20, 2004, NSAF filed a Complaint for Injunctive and Declaratory Relief, along with a motion requesting that the Court enter a temporary restraining order enjoining the Agency from continuing to deny NSAF

expedited processing of its September 16, 2004 FOIA request (as supplemented by NSAF's letter of October 4, 2004).

11. By letter dated October 22, 2004, the Agency provided the NSAF with the final response to NSAF's September 16, 2004 FOIA request (as supplemented by NSAF's letter of October 4, 2004). The Agency informed NSAF that the Agency processed NSAF's request in accordance with the FOIA, 5 U.S.C. § 552, as amended, and the CIA Information Act, 50 U.S.C. § 431, and determined that the material responsive to NSAF's request "is properly classified and must be denied in its entirety on the basis of FOIA exemptions (b)(1) and (b)(3)."

12. On November 3, 2004, Plaintiff amended its Complaint to seek release of the 2004 National Intelligence Estimate on Iraq.

The Sensitive Information at Stake in This Case

13. The NIC prepared the 2004 Iraq NIE ("the Estimate"). The NIC and the National Intelligence Officers that staff the NIC serve as the DCI's primary instruments for coordinating the substantive finished intelligence output of the Intelligence Community as a whole; that is, the intelligence products that pool the judgments of the agencies making up the National Foreign Intelligence Board. The NIC accomplishes this objective primarily through the

production of NIEs. The mission, size, and composition of the NIC are adjustable at the discretion of the DCI to meet his needs as the principal intelligence advisor to the President and as the senior leader of the U.S. national Intelligence Community.

14. While the specific content of the Estimate is classified, I wish to describe it generally in this Declaration to the extent possible on the public record. The Estimate was published in July 2004. The Estimate provides an assessment of Iraq's capabilities for internal stability and self-governance. The main text is periodically interspersed with bullet-points, boxed sidebar discussions, and graphics.

15. In broad terms, the Estimate is based on and incorporates all-source reporting and intelligence, with classified information inexorably intertwined throughout the document. The Estimate analyzes political, social, economic, and security information regarding Iraq, extrapolates from this analysis to posit scenarios, and assigns probabilities based on different combinations of events and factors. The Estimate concludes with a section intended to provide policymakers with additional guidance on how U.S. policies related to Iraq may best be implemented.

FOIA Exemptions Claimed for the CIA Withholdings

FOIA Exemption (b)(1)

16. FOIA Exemption (b)(1), 5 U.S.C. § 552(b)(1), as amended, protects from disclosure "[m]atters" that are:

(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.

17. 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 12958, as amended. As stated above, I have been delegated original TOP SECRET classification authority pursuant to Executive Order 12958, as amended. I am authorized to conduct classification reviews and to make original classification decisions. I have personally reviewed the Estimate and have determined that the information for which FOIA exemption (b)(1) is asserted is currently and properly classified under Executive Order 12958, as amended. I will discuss this in further detail below.

18. Section 6.1(h) of Executive Order 12958, as amended, defines "classified national security information" or "classified information" as "information that has been determined pursuant to this order or any predecessor order

to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form." Section 3.1 of Executive Order 12958, as amended, states that information "shall be declassified when it no longer meets the standards for classification under this order" and that "[i]t is presumed that information that continues to meet the classification requirements under this order requires continued protection." I have determined that the CIA information protected falls within at least two of the eight categories for classified information listed in section 1.4 of Executive Order 12958, as amended, namely "intelligence activities (including special activities), intelligence sources or methods, or cryptology" (§ 1.4(c)) and "foreign relations or foreign activities of the United States, including confidential sources" (§ 1.4(d)).

Intelligence Activities

19. The information at issue in this case would tend to reveal past and ongoing U.S. intelligence activities. The Estimate contains explicit assessments of current U.S. intelligence capabilities and how those capabilities might be allocated to best assist U.S. and Coalition activities in Iraq. Were Iraqi insurgents, terrorists or other

hostile forces able to learn such information, it would allow them to apply countermeasures. This would not only likely deny the U.S. the ability to gather information of interest, it would likely put the lives of U.S., Coalition and Iraqi troops and civilians at risk.

20. The effective collection and analysis of intelligence requires the Agency to prevent disclosing information that hostile forces could use to determine specific areas and persons in which the Agency is interested and upon which it focuses its methods and resources. Every country or group has limited resources. The disclosure to a potential U.S. intelligence target of the areas and persons of Agency interest would indicate to that target how the Agency is allocating its resources and managing its activities. The target may then be in a position to take countermeasures and allocate its resources and plans more effectively to frustrate the Agency's efforts against them. Similarly, if hostile forces were able to gather information on how the Agency might allocate its resources and efforts in furtherance of broader U.S. policy goals, those hostile forces may be enabled to better frustrate U.S. policy in a given region.

21. The Estimate contains discussion and analysis of current and potential conditions in Iraq. Such analysis

and discussion may directly or indirectly indicate areas where information is incomplete or speculative, i.e., where "gaps" in U.S. intelligence may lie. This information, in the hands of hostile forces, may allow them to determine where or how U.S. intelligence activities are being managed and allocated, and the degree of success or failure they are achieving. Hostile forces could use this information to thwart the Agency's intelligence activities, impair the Agency's collection abilities, and endanger lives.

22. For the foregoing reasons, I have determined that unauthorized disclosure of information responsive to NSAF's FOIA request that could reveal past or present intelligence activities could reasonably be expected to cause serious damage to the national security of the United States. Thus, such information is currently and properly classified and is coextensively exempt from disclosure pursuant to FOIA exemption (b)(1).

Intelligence Sources

23. The information at issue in this case would tend to reveal the identity of various intelligence sources of the Agency.

24. The Agency relies on a variety of types of intelligence sources to collect foreign intelligence critical to our national security. Intelligence sources

include individual human sources, foreign or American; foreign entities; and the intelligence and security services of foreign countries. Intelligence sources can be expected to furnish information only when confident that they are protected from revelation, retribution, or embarrassment by the absolute secrecy surrounding the source-CIA relationship. In other words, intelligence sources must be certain that the Agency can and will do everything in its power to prevent the public disclosure of their association with the Agency.

25. For example, if an Iraqi national is willing to share with the Agency information on Iraqi insurgent activity which she or he collected in the course of his or her everyday activity, such an individual would suffer serious threat of or actual physical harm to both him or her and his or her family, should the fact of their collaboration with the Agency become known. Indeed, this person's very life would be placed at risk. The consequences of public disclosure of the collaboration are often swift and far-ranging, from economic reprisals to possible harassment, imprisonment, or even death. Finally, if the cooperation of this individual is revealed, the future value of the individual to the U.S. Government as an ongoing source of intelligence is at best severely degraded

or, most likely, destroyed altogether and access to information is withdrawn.

26. In light of the probable consequences of disclosure, individuals and entities are understandably reluctant to cooperate with the Agency unless they can be absolutely certain that the fact of their cooperation will forever remain secret. Intelligence sources are not only vulnerable to retribution if and when they are identified or, indeed, merely suspected of being Agency collaborators; in many cases, even if the sources identity is not revealed, the very nature of the information communicated necessarily tends to reveal the source because of the limited number of individuals who have access to the information. If such information is disclosed, the source may be perpetually vulnerable to discovery and the ensuing consequences.

27. Moreover, the release of information that would tend to reveal the identity of various intelligence sources of the Agency most likely would have a serious effect upon the Agency's ability to recruit other potential sources in the future. If future potential sources know that others have had their identities revealed, those individuals will be less willing to cooperate with the agency. Thus, the Agency itself has a primary interest in keeping these

identities secret, not only to protect the sources, but also to demonstrate to other sources, and potential future sources, that the Agency can be trusted to preserve the secrecy of the relationship.

28. If a potential source has any doubts about the ability of the Agency to preserve secrecy, that is, if he or she even learns that the identity of another source was disclosed by the Agency, his or her willingness and desire to cooperate with the Agency likely will be impaired. This is because sources, be they present or future, usually will not work for the Agency if they believe or even suspect that the Agency will not or cannot protect their identities. The loss of such intelligence sources, and the accompanying loss of the critical intelligence that they provide, could reasonably be expected to cause serious damage to the national security.

29. Therefore, I have determined that unauthorized disclosure of information responsive to NSAF's FOIA request that could reveal intelligence sources could reasonably be expected to cause serious damage to the national security of the United States. Thus, such information is currently and properly classified and is coextensively exempt from disclosure pursuant to FOIA exemption (b)(1) and, as discussed below, FOIA exemption (b)(3).

Intelligence Methods

30. The information at issue in this case would tend to reveal intelligence methods. The Estimate contains information that concerns foreign intelligence relationships of the United States. Such relationships constitute specific methods for the collection of intelligence. The mere fact of the use of these relationships under certain circumstances must be protected. Divulging information concerning a collection method used under specific circumstances could compromise that collection method's future value.

31. The Estimate also contains information that concerns technical collection methods used to gather intelligence. Intelligence methods include the technical tools used by the Agency to accomplish its mission. Secret information collection techniques or technological devices are valuable from an intelligence-gathering perspective only so long as they or their use remain unknown and unsuspected. In many cases merely making public the information generated through such techniques or devices will expose them; hostile forces can deduce their existence from the very fact that the U.S. Government has information, because often there would be no other way for the U.S. to acquire a specific piece of information.

32. Generally, intelligence methods are the means by which, and the manner in which, an intelligence agency accomplishes its mission. Most organized professions or businesses employ methods that are common to and, in some cases, unique to that business or profession, to accomplish their goals and objectives. Certain methods used in intelligence activities imbue any resulting records with a special character that necessitates protecting the fact of their use, as well as the details of their use, from unauthorized disclosure.

33. Intelligence methods must be protected in situations where a certain capability or technique, or the application thereof, is unknown to those individuals or entities that would otherwise take countermeasures. Secret information-collection techniques, capabilities, or technological devices are valuable from an intelligence-gathering perspective only so long as they remain unknown. Once the nature of an intelligence method or the fact of its use in a certain situation is discovered, its continued successful use is in serious jeopardy. In fact, once an intelligence method or its use is discovered, the method may be neutralized by hostile intelligence services or terrorist organizations, and eventually even turned against the United States.

34. Detailed knowledge of the methods and practices of an intelligence agency must be protected from disclosure because such knowledge would be of material assistance to those who would seek to penetrate, detect, prevent, or damage the intelligence operations of the United States. The disclosure of a particular method leads to the neutralization of that method, whether the method is used for the collection of intelligence information, the conduct of clandestine activities, or the analysis and evaluation of intelligence information.

35. Knowledge of or insights into specific intelligence collection methods would be of invaluable assistance to those who wish to detect, penetrate, counter, or evaluate the activities of the Agency. In summary, it is both the fact of the use of a particular intelligence method in a particular situation, in addition to the methodology itself, which must be protected. Disclosure of this kind of information would allow an adversary to pinpoint the actual intelligence methods at issue, thereby possibly compromising the past and future value of the particular methods.

36. In exercising his authority granted by Congress, the DCI must do more than protect the name of an intelligence source or a mere reference to an intelligence

method. Foreign intelligence services have as one of their primary defensive missions the discovery of the particular methodologies the CIA utilizes. A primary vehicle for that effort is scouring the public sector for officially released intelligence information. Even from disparate and seemingly unimportant details, foreign intelligence services can learn how to thwart the Agency's intelligence gathering capabilities. What may seem trivial to the uninformed, may in fact be of great significance and may put a questioned item of information in its proper context.

37. Accordingly, the DCI, in exercising his authority, has the power to withhold a full spectrum of information concerning particular intelligence methods if it is determined that such information could reasonably be expected to assist foreign intelligence services to the detriment of the United States. These decisions are made by the senior government official entrusted with national security and most familiar with the entire intelligence environment. Without such protection, the Agency would quickly become impotent. Specific categories regarding intelligence methods are set forth below.

38. For the foregoing reasons, I have determined that unauthorized disclosure of information responsive to NSAF's FOIA request that could reveal intelligence methods could

reasonably be expected to cause serious damage to the national security of the United States. Thus, such information is currently and properly classified and is coextensively exempt from disclosure pursuant to FOIA exemption (b)(1) and, as discussed below, FOIA exemption (b)(3).

Foreign Relations and Activities

39. The information at issue in this case would tend to reveal matters concerning foreign relations and foreign activities of the United States. The Estimate contains candid descriptions, judgments, and analyses of various elements of the fledgling Iraqi government and institutions. The Estimate also contains analysis and other material that is directly relevant to ongoing foreign activities of the United States.

40. Release of such information from the Estimate could, when viewed through third-party eyes, provoke resentment, anger, or offense, thereby complicating U.S. foreign relations. In addition, release of such information from the Estimate could complicate relationships with our Coalition partners, and make it harder to further recruit allies to our cause. The release of such information from the Estimate would permit hostile forces within and outside of Iraq to gain insights U.S. activities and thwart U.S. and Coalition policies in Iraq.

41. Therefore, I have determined that unauthorized disclosure of information responsive to NSAF's FOIA request that pertains to U.S. foreign relations and foreign activities of the United States could reasonably be expected to cause serious damage to the national security. Thus, such information is currently and properly classified and is coextensively exempt from disclosure pursuant to FOIA exemption (b)(1).

FOIA Exemption (b)(3)

42. FOIA exemption (b)(3), 5 U.S.C. § 552(b)(3), as amended, protects matters that are specifically exempted from disclosure by statute (other than the FOIA), 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."

43. FOIA exemption (b)(3) protects any information contained in the Estimate that is also protected by either Section 103(c)(7) of the National Security Act of 1947, 50 U.S.C. § 403-3(c)(7), as amended, which requires the DCI to protect intelligence sources and methods from unauthorized disclosure; or Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g, as amended, which exempts the Agency from the provisions of any law that requires "the publication or disclosure of the organization,

functions, names, official titles, salaries, or numbers of personnel employed by the Agency." The Estimate contains information that falls within the scope of these two withholding statutes and thus, the scope of FOIA exemption (b) (3).

Agency Sources and Methods

44. Section 103(c)(7) of the National Security Act of 1947, 50 U.S.C. § 403-3(c)(7), as amended, requires the DCI to protect intelligence sources and methods from unauthorized disclosure. As discussed above, the Estimate contains information that would otherwise indicate the use or existence of specific intelligence sources or methods. I have determined the information contained in the Estimate concerning intelligence sources and methods must be protected from disclosure pursuant to Section 103(c)(7) of the National Security Act and FOIA exemption (b) (3).

Agency-Specific Information

45. Section 6 of the Central Intelligence Agency Act of 1949, 50 U.S.C. § 403g, as amended, exempts the Agency from the provisions of any law that requires "the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency." The Estimate contains certain Agency-specific information pertaining to the titles, organizational identifiers, and filing instructions of Agency internal organizational components that falls within the scope of Section 6 of the CIA Act of 1949 and that has

been protected from disclosure pursuant to FOIA exemption (b) (3).

FOIA Exemption (b) (5)

46. FOIA Exemption (b) (5), 5 U.S.C. § 552(b) (5), as amended, protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." I have determined that the Estimate is an inter-agency and intra-agency document that is comprised of pre-decisional, deliberative information protected by the deliberative process privilege and thus falls within the protection of FOIA exemption (b) (5).

47. FOIA exemption (b) (5) extends protections available to a federal agency during the litigation process to the FOIA process. The deliberative process privilege is a governmental privilege that permits the Government to withhold documents or information that reflect advisory opinions, recommendations and deliberations comprising part of a process by which Government decisions and policies are formulated. The deliberative process privilege allows the Government to protect the internal deliberations of policymakers, recommendations, analyses, speculation and other information, both non-factual and in some cases

factual, prepared to inform decision-making. The deliberative process privilege protects deliberative, pre-decisional information or documents used in the decision-making process as well as the integrity of the deliberative process itself.

48. This privilege is designed to protect and encourage open, candid discussions on matters of policy between subordinates and superiors. It protects decision-makers' ability to receive confidential advice and counsel, as well as allows agencies to freely explore alternative avenues of action and to engage in internal debates without fear of public scrutiny.

49. The Estimate represents a quintessential example of a deliberative, pre-decisional process that requires protection under the deliberative process privilege and FOIA exemption (b)(5). The Estimate, by its very nature, is designed to provide the President and senior policy-makers the best, most clear and complete analysis and assessment from which to create and implement policy. Indeed, the specific factual information presented, along with the analysis and policy guidance, forms the heart of the deliberative process.

50. Disclosure of pre-decisional policy analysis and deliberation would effectively stifle and "chill"

pre-decisional debates within the Government. Participants would hesitate to voice opinions or points of view that may, at first blush, appear radical or "outside the box," or could be subject to misinterpretation or taken out of context by others. Participants' worries about such problems could lead them to refrain from providing the unvarnished truth in their analyses to policy-makers, who would then be left with an incomplete and, therefore, flawed foundation on which to base their ultimate decisions.

51. The deliberative process privilege protects not only the analytical and policy-prescriptive information within the Estimate, but also the factual information interspersed throughout the Estimate. The specific facts contained in the Estimate were selected and highlighted out of a wide body of other potentially relevant factual and background material. The Estimate contains various factual descriptions of what the authors consider to be key elements of Iraq's social, political, and economic condition.

52. Given the NIC's role as the DCI's primary instrument for coordinating the substantive finished intelligence output of the Intelligence Community as a whole, it is critical that it be able to formulate and

provide unfiltered information, policy analysis and guidance through the most unfettered, unbiased process possible, free of any external influences or concerns. I have no doubt that disclosure of any part of the Estimate would have a "chilling" effect on the quality of and level of candor in the deliberative process and in future National Intelligence Estimates, due to the uncertainty of being able to preserve confidentiality. Thus, I have determined that disclosure of any part of the Estimate in response to NSAF's FOIA request would cause harm to the Agency's and the Government's internal deliberative process regarding U.S. policy generally.

Segregability

53. Following a careful review and consideration of the Estimate, as a whole, and on a line-by-line basis, I have determined that the Estimate must be protected from release in its entirety, on the basis of FOIA exemptions (b) (1), (b) (3), and (b) (5), and that no reasonably segregable, non-exempt portion of the document exists. I have determined that there are no meaningful segments of information that reasonably can be segregated for release. All of the information in the Estimate is related to intelligence activities, sources and methods, foreign

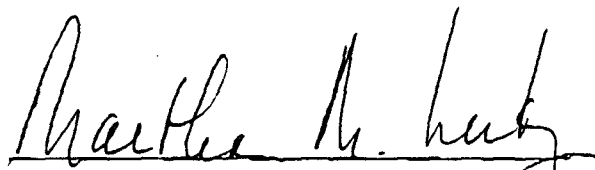
government information, foreign relations and activities, and/or the deliberative process. Any non-exempt information is so inextricably intertwined with the exempt information that release of the non-exempt information would produce only incomplete, fragmented, unintelligible sentences composed of isolated, meaningless words. Therefore, I have determined that the non-exempt information cannot be reasonably segregated from the exempt information.

Conclusion

54. I have determined for the reasons set forth above that the Estimate must be protected from release because its disclosure could reasonably be expected to cause harm to the national security, to reveal intelligence sources and methods, and to harm the deliberative process.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18 day of January 2005.



Martha M. Lutz
Information Review Officer
Director of Central Intelligence Area
Central Intelligence Agency