

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ELECTRONIC FRONTIER FOUNDATION,)
)
Plaintiff,)
)
v.) Case No. 4:09-CV-03351-SBA
)
CENTRAL INTELLIGENCE)
AGENCY, et al.,)
)
Defendants.)
_____)

DECLARATION OF MARTHA M. LUTZ
INFORMATION REVIEW OFFICER
DIRECTOR'S AREA
CENTRAL INTELLIGENCE AGENCY

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

1. I am the Information Review Officer (IRO) for the Director's Area of the Central Intelligence Agency (CIA). The Director's Area encompasses not only the Offices of the Director of the CIA and the Deputy Director of the CIA, but also several components not organized under one of the CIA's four main directorates (Support, Intelligence, National Clandestine Service, and Science & Technology), such as the Office of Inspector General and the Office of General Counsel. I have held this position since 19 January 1999. I have also held various administrative and professional positions within the CIA since 1989.

2. As the IRO for the Director's Area, I am authorized to assess the current, proper classification of CIA information, based on the classification criteria of Executive Order 12958, as amended, and applicable CIA regulations.¹ As IRO, I am responsible for the classification review of documents and information originated by the Director's Area or otherwise implicating Director's Area interests, including documents which may be the subject of court proceedings or public requests for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. As part of my official duties, it is my responsibility to ensure that any determinations as to the public release or withholding of any such documents or information are proper and do not jeopardize the national security.

3. As a senior CIA official under a written delegation of authority pursuant to section 1.3(c) of Executive Order 12958, as amended, I hold original classification authority at the TOP SECRET level. I am authorized, therefore, to conduct classification reviews and to make original classification and declassification decisions.

¹ Executive Order 12958 was amended by Executive Order 13292. See Exec. Order No. 13292, 68 Fed. Reg. 15315 (Mar. 28, 2003). All citations to Exec. Order No. 12958 are to the Order as amended by Exec. Order No. 13292. See Exec. Order No. 12958, 3 C.F.R. 333 (1995), reprinted as amended in 50 U.S.C.A. § 435 note at 204 (West Supp. 2009).

4. Through the exercise of my official duties, I have become familiar with this civil action and the underlying FOIA requests. I make the following statements based upon my personal knowledge and information made available to me in my official capacity. I make this declaration in support of the CIA's opposition to Plaintiff's Motion for Partial Summary Judgment. The purpose of this declaration is to describe, to the greatest extent possible on the public record, the CIA's procedures for responding to FOIA requests in general, and to explain why the CIA needs, and respectfully requests that it be given, until at least 31 March 2010 to locate and process potentially responsive records for possible release.

I. PROCEDURAL HISTORY OF THE CASE

5. By letter dated 25 February 2008, Plaintiff Electronic Frontier Foundation (EFF) submitted to the CIA a FOIA request seeking "copies of all reports submitted by the [CIA] to the Intelligence Oversight Board ("IOB") pursuant to Section 2.4 of Executive Order 12863. . . . since January 1, 2001."

6. By letter dated 19 June 2009, Plaintiff submitted to the CIA another FOIA request seeking President's Intelligence Advisory Board (PIAB)- and IOB-related records from 25 February 2008 to the date of the letter.

7. By letter dated 23 June 2009, the CIA acknowledged receipt of Plaintiff's 25 February 2008 FOIA request. The letter further informed Plaintiff:

We are currently processing a request for the same records from another requester. Once our research and review of that request is completed, we will forward to you the same CIA-originated records, if released. . . . We have a substantial backlog, which we are working diligently to reduce, so we are unable to estimate when our review will be completed. However, you will be notified once the processing of the original request is complete.

The third party request regarding IOB reports, which is referenced in the quotation above, was submitted to the CIA by letter dated 25 October 2006 and is substantially similar to Plaintiff's initial request. The third party October 2006 request is still being processed for possible release.

8. Plaintiff filed a Complaint on 22 July 2009 against the CIA, and several other government agencies, seeking the release of the IOB-related records requested in Plaintiff's 25 February 2008 and 19 June 2009 FOIA requests.

9. The CIA and the other defendants filed an Answer on 28 August 2009.

10. On 28 September 2009, Plaintiff filed a Motion for Partial Summary Judgment on the issue of timely processing.

II. CIA'S PROCESSING OF FOIA REQUESTS GENERALLY

11. The CIA's Office of Information Management Services (IMS) is the initial reception point for all FOIA requests. Experienced IMS information management professionals analyze each request to determine whether the CIA is able to confirm or deny the existence or non-existence of any responsive records and whether any such records, if the CIA can confirm their existence, are subject to search and review under the provisions of FOIA. If records subject to acknowledgement and search are likely to exist, IMS experts determine which CIA components might reasonably be expected to possess records responsive to a particular request. A copy of the request is then forwarded to each relevant CIA directorate's Information Review Officer for search of potentially responsive documents. It is quite common for a search to involve multiple components.

12. After searches have been completed, officers must review the documents retrieved to determine whether they are in fact responsive to the request. Because of the nature of a particular records-management system, or the search tools, indices, or terms employed, a search may locate many documents that are not responsive to a request.

13. After officers remove any non-responsive documents, the Information Review Officers must then review the remaining documents to determine which, if any, FOIA exemptions may apply,

and whether they can reasonably segregate non-exempt information from exempt information as required by FOIA. In evaluating responsive documents, officers must segregate exempt information to avoid the inadvertent disclosure of classified information, information concerning intelligence sources and methods, or other information protected by the FOIA exemptions. Information Review Officers must be knowledgeable about historical decisions to declassify certain facts or information as well as the context of any such prior releases, and consider this, as appropriate, when processing FOIA requests. This process is laborious and time-consuming, in part because the inadvertent release of a FOIA-exempt document, or a portion thereof, could potentially cause grave damage to U.S. national security.

14. In the course of reviewing documents for exempt information (and information that may reasonably be segregated), it is common to identify information that is relevant to or the product of another CIA component or another government agency and which therefore requires coordination with that component or agency. That coordination can in some cases be quite time-consuming, in part because other components and agencies have their own missions and FOIA priorities.

15. FOIA's requirement to release portions of documents that can reasonably be segregated means that the CIA's reviewers must conduct a word-by-word review of each and every document.

This exacting review is required to guard against the inadvertent release of critical national security information and to ensure that the CIA properly withholds information pursuant to FOIA exemptions (b)(1) and (b)(3), among other applicable exemptions.

16. When all of the components and agencies complete their respective reviews, IMS professionals incorporate all of their recommendations regarding exemptions, segregation, redaction, and release, resolve conflicting recommendations, and ensure that any release or withholding determinations comply with the law and published CIA regulations. A review is then conducted from a corporate perspective on behalf of the entire CIA and additional exempt information that reflects overall CIA equities may be identified. A final record copy of each document is then produced and a response is provided to the FOIA requestor.

17. The CIA receives hundreds of FOIA requests each year. Broad requests are common. The CIA strives to process FOIA requests expeditiously and fairly, and in recent years has implemented efforts to improve and expedite its FOIA processing through continuous process improvements, technological advances, reorganization, and increased dedication of resources. For example, the CIA established a special task force to work exclusively on old cases. Furthermore, in recognition of the fact that the FOIA backlog has been exacerbated by the

substantial demands that litigation matters place upon the CIA's FOIA officers, the CIA created a unit and increased the staffing within the FOIA office to handle FOIA litigation. Through efforts such as these, the CIA has developed a good historical record of reducing the backlog of FOIA cases. In fact, the CIA is currently processing approximately 700 open FOIA requests, which is substantially down from recent years when the backlog stood at over 4,800 cases and 1,400 cases at the conclusion of fiscal years 1997 and 2003, respectively.

18. The CIA generally handles FOIA requests made to the Agency according to a "first in, first out" basis, although it may, for reasons of efficiency, process less complex and time-consuming requests ahead of more complex or voluminous requests that will require much more time, consistent with 5 U.S.C. § 552(a)(6)(D) and 28 C.F.R. § 16.5(b). Complexity is not necessarily dictated by the volume of documents requested, but can also be attributed to the incorporation of operational and national security equities within individual documents, as well as other special considerations.

III. CHALLENGES ASSOCIATED WITH PLAINTIFF'S FOIA REQUESTS

19. In regards to Plaintiff's specific FOIA requests, the CIA's efforts to locate responsive documents has begun and remains ongoing. Plaintiff did not formally request expedition. The lack of such a request would ordinarily require that

Plaintiff's requests be placed in the queue to be handled consistent with the CIA's general "first in, first out" policy. However, certain factors have resulted in Plaintiff's requests being effectively expedited. First, as stated above, Plaintiff's first request was piggy-backed onto a similar request that the CIA received in October 2006. Second, the CIA has combined Plaintiff's recent June 2009 request with Plaintiff's first FOIA request for the purpose of responding in this litigation. Because the CIA is currently processing approximately 700 open FOIA requests and has a substantial backlog that it is working diligently to reduce, Plaintiff's June 2009 request typically would not benefit from this type of immediate attention.

20. Plaintiff's request for IOB-related documents is particularly complex because there are multiple offices within the CIA that possess potentially responsive records and therefore need to be searched. Moreover, IOB-related records contain CIA-originated information from numerous CIA offices, including information from various divisions within the National Clandestine Service. Thus, in the course of reviewing Plaintiff's requests for exempt or segregable information, the Director's Area will need to coordinate with all of these other components and offices, which is very time-consuming.

21. Beyond the need to coordinate with multiple offices within the CIA, the CIA also needs additional time to coordinate with other agencies whose information or equities are implicated by the CIA's IOB-related records. This is time that must be built into the overall process after the CIA has completed its own search and review process. While many factors ultimately determine how long the coordination process will take, the CIA is currently estimating that it will need to finish its own search and review process and begin the external coordination process at least two months before any response deadline in this litigation.

22. Further compounding matters is the fact that the CIA is currently responding to other voluminous FOIA requests. These other requests have placed an unusually large strain on the CIA's resources. While the CIA continues to make progress on Plaintiff's requests, the CIA must simultaneously move forward on these other time-consuming requests.

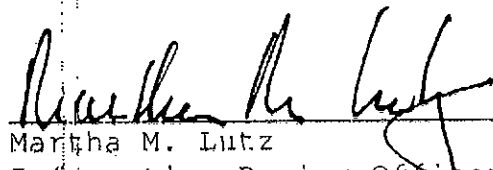
23. Although the CIA cannot precisely say how long it will take to finish the FOIA search and review process described in this declaration, based upon my substantial experience in this area, my specific knowledge of these particular requests, and the factors discussed above, I estimate that the CIA will need until at least 31 March 2010 to respond to Plaintiff's FOIA requests.

IV. CONCLUSION

24. For all the foregoing reasons, the CIA has to date been unable to provide Plaintiff with a final response to its FOIA requests but will continue to move forward, taking into account the unique challenges presented by the documents, and respectfully requests that the Court grant the CIA until at least 31 March 2010 to provide Plaintiff with a final response.

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

Executed this 21 day of October, 2009.



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