

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LARRY W. BRYANT,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY
and LEON PANETTA, Director, CIA,

Defendants.

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) Civil Action No.: 09-0940 (EGS)
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**DECLARATION OF DELORES M. NELSON
CENTRAL INTELLIGENCE AGENCY**

I, DELORES M. NELSON, hereby declare and say:

1. I am the Chief, Public Information Programs Division, Information Management Services ("IMS"), Office of the Chief Information Officer ("CIO"), Central Intelligence Agency ("CIA"). Since 21 April 2008, I also serve as the CIA Information and Privacy Coordinator ("Coordinator"). I have served with the CIA for approximately twenty-nine years and, in addition to my current positions, have held other supervisory positions with the CIA.
2. I make this declaration in support of the CIA's motion for summary judgment in this proceeding.
3. In my current capacities, I am responsible for managing the Freedom of Information Act ("FOIA"), Privacy Act, and Executive Order 12958 Mandatory

Declassification Review programs in the CIA. These responsibilities include directing searches of CIA records systems pursuant to public requests for records under these programs and coordinating the reviews of any records retrieved in such searches. These review processes include undertaking any intra-agency and inter-agency coordination and referrals necessary in light of the information found in responsive records. In addition, my responsibilities include fee category and fee waiver determinations.

4. As part of my official duties I ensure that the CIA administratively processes FOIA and Privacy Act requests including the search, retrieval, analysis, review, redaction and release of documents in accordance with the law and as efficiently as possible with the personnel and resources available.
5. Through the exercise of my official duties, I have become familiar with Plaintiff's FOIA request for information that is the subject of this civil action. I make the following statements based upon my personal knowledge, and information made available to me in the course of performing my official duties.

I. PLAINTIFF'S FOIA REQUEST AND THE CIA'S RESPONSE

6. By "letter"¹ dated August 23, 2008 (received in the office of the Information and Privacy Coordinator on August 28, 2008), Plaintiff submitted a FOIA request to the CIA for the following "CIA-received and CIA-generated" records:

¹ The "letter" is actually a print-out of email correspondence between the Office of the Director of National Intelligence and Plaintiff with handwritten annotations addressed to "Scott Koch [former CIA Information and Privacy Coordinator], changing date to "23" August, and containing signature of Plaintiff. The text states in part "By snail- mail, I'm sending to you a signed printout of this e-formatted letter."

- a. "As pertain to the convening, attendance roster, briefings, minutes, and all other related documentation" of the "1987 special meeting at FAA headquarters in Washington, D.C., to discuss and evaluate...the intrusive UFO encounter experienced on Nov. 17, 1986, by the Japanese flight crew (No. 1628) of a 747 cargo jet...in Alaskan sky."
 - b. "As pertain to all other similar cases of airborne UFO encounters reportedly occurring since Nov. 17, 1986, to date."
- Plaintiff also stated that since he was submitting his request as "a representative of the news media principally as a columnist for the monthly newsstand periodical 'UFO Magazine'", he asked that "all records-search/review fees" be waived. (A true and correct copy of Plaintiff's initial request is attached hereto as Exhibit A.)
7. By letter dated September 30, 2008, the CIA acknowledged receipt of Plaintiff's request and assigned it reference number F-2008-01781. The letter went on to explain that "there is no organized effort to do research in connection with UFO phenomena, nor has there been an organized effort to collect intelligence on UFOs since the 1950s." There is currently no CIA program to actively collect information on UFOs. The letter then discussed the release by CIA of UFO-related documents (2,779 pages) in response to prior FOIA requests and a special search conducted in 1993 at the direction of then CIA Director James Woolsey, which included the search for and review of all Agency files on UFOs. The letter also enclosed a copy of CIA's fee schedule and stated the cost for the UFO package was \$267.90, ten cents per page less the first 100 pages free. That is the cost of duplication. Since this information was previously released and the charge

was for duplication only, it was not affected by fee category.² The letter further explained that requests for fee waivers³ must be considered under the standards that Agency regulations outlined at Part 1900 of Title 32 of the Code of Federal Regulations (C.F.R.). In accordance therewith, the CIA informed Mr. Bryant that because the information he sought was already in the public domain, and “its re-release would not likely contribute significantly to public understanding of the operations and activities of the United States Government”, his request for a fee waiver was denied. The September 30, 2008 letter also informed Plaintiff that he could appeal the denial of his request for a fee waiver within 45 days from the date of the letter, but if CIA has started to process a request, the Agency may accept an appeal of a fee waiver denial only “if the requester agrees to be responsible for the costs in the event of an adverse administrative or judicial decision”. (A true and correct copy of CIA’s September 30, 2008 letter and enclosures is attached hereto as Exhibit B.)

² The CIA did not formally address Plaintiff’s request for status as a new media representative in its September 30, 2008 letter, although after explaining the cost of the UFO package—ten cents per page less the first 100 pages, the letter stated “as a requester in the ‘all other’ category.” Regardless, since the only charge was for duplication, the fee was the same whether his fee category was determined to be news media or all other.

³ Although Plaintiff used the term “waiver” in his request letter, based on context of his letter (and subsequent appeal and complaint), it appears that there was confusion over fee category (status) and fee waiver and that requester used the latter term to mean his request for news media status. Notwithstanding that it appears Plaintiff did not request a fee waiver, because of his use of the term waiver, the CIA treated it as such.

8. By letter dated October 3, 2008⁴, Plaintiff appealed the CIA's decision "to deny my FOIA request status as a representative of the news media" as regards request F-2008-01781. Plaintiff went on to state "By this appeal I hereby characterize my records-search-fee-waiver 'request' as a DEMAND" and cited 5 U.S.C. § 522 "a(4)(A)(ii)(II), namely, 'fees shall be limited to reasonable standard charges for document duplication when...the request is made by...a representative of the news media.'" (A true and correct copy of Plaintiff's appeal request is attached hereto as Exhibit C.)
9. By letter dated October 28, 2008, the CIA acknowledged Plaintiff's letter in which he appealed our determination to deny him "status as a representative of the news media" and to deny his "request for a fee waiver."
10. The CIA explained to Plaintiff that since records responsive to his FOIA request had been previously released and no additional searches were conducted, he would be responsible "for copying costs associated with this request regardless of fee category determination." That is, these copying fees would apply even if he were placed into the news media fee category. With respect to his appeal of the denial of a fee waiver, the CIA reiterated that "if processing has been initiated, the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision." (See 32 C.F.R. § 1900.13(d).) Accordingly,

⁴ The "letter" composed as email on October 3, 2008, is actually dated "6 Oct 2008" in a handwritten annotation next to Plaintiff's signature. The text states in part: "By snail-mail, I'm sending to you a signed printout of this e-formatted letter." The appeal was received in my office on October 14, 2008 (see date stamp).

the CIA declined to accept Plaintiff's fee waiver denial appeal.⁵ (A true and correct copy of CIA's response to Plaintiff's appeal request is attached hereto as Exhibit D.)

11. On May 20, 2009, Plaintiff commenced this action, alleging that Defendant "failed to grant Plaintiff news media representative status", "a fee waiver so as only to have to pay photocopying and reproduction fees," (Compl., ¶¶ 9 and 10), and for the first time, Defendant "did not use the level of diligence and good faith to conduct a search." (Id., ¶ 12).
12. By letter dated June 23, 2009, the CIA informed Plaintiff it would reopen his request, granted him news media representative status for this request, and conduct a search for "CIA-received and CIA-generated" records on the following:
 - a. "the convening, attendance roster, briefings, minutes, and all other related documentation of the 1987 special meeting at FAA headquarters in Washington, D.C.",
 - b. "all other similar cases of airborne UFO encounters reportedly occurring since Nov. 17, 1986, to date." (A true and correct copy of this letter is attached hereto as Exhibit E.)
13. By letter dated October 21, 2009, the CIA informed Plaintiff that no records responsive to item (a) above were located and that with respect to item (b), U.S. Government material (not originated by the CIA) was located and has been referred to the originating agencies for their review and direct response to him.

(b)(3) CIAAct

The CIA also informed Plaintiff that "CIA regulations governing administrative appeals provide that no appeal shall be accepted if the information in question is the subject of pending litigation in the federal courts." (A true and correct copy of this letter is attached hereto as Exhibit F.)

14. The CIA referred the three potentially responsive documents to the government agencies which originated the documents: Department of State and National Security Agency.

II. CIA'S SEARCH FOR RESPONSIVE DOCUMENTS

A. CIA Records Systems

15. The CIA's records systems are designed to support CIA's intelligence activities and responsibilities. The CIA's ability to retrieve data from a given records systems depends upon the type of information stored in that system and the way the system is designed to retrieve that information. Records systems and indexing systems vary among CIA components because they must reflect and respond to the established responsibilities and needs of those individual components. For example, some CIA records systems are organized to facilitate the collection of foreign intelligence, while others facilitate the analysis of intelligence information, depending upon the missions of the particular CIA component.
16. All CIA records are maintained by one of four directorates or the independent offices and entities that report to the Director of the CIA: the National Clandestine Service ("NCS"), the Directorate of Intelligence ("DI"), the Directorate of Science and Technology ("DS&T"), the Directorate of Support ("DS") and the Director of CIA Area ("DIR Area").

17. The DI is the CIA directorate that analyzes, interprets, and forecasts foreign intelligence issues and world events of importance to the United States. It is responsible for producing finished intelligence reports for dissemination to policymakers in the United States Government. Appropriately trained personnel regularly conduct FOIA and other searches of the DI records system as part of their normal duties.
18. The DS&T is the CIA directorate that creates and applies technology to fulfill intelligence requirements. The DS&T also maintained records produced by the Foreign Broadcast Information Service, the primary collector of foreign open-source information for the United States Government until the establishment of the DNI Open Source Center in 2005⁶. Open-source information is information that is generally available to the public, such as foreign newspapers, periodical publications, and television and radio broadcasts. Appropriately trained personnel regularly conduct FOIA and other searches of the DS&T records system as part of their normal duties.
19. The NCS is the organization within CIA responsible for the clandestine collection of foreign intelligence information from human sources. The NCS records system contains information on persons or entities that are of foreign intelligence or counterintelligence interest to the CIA and other United States Government agencies. Appropriately trained personnel regularly conduct FOIA and Privacy Act searches of the NCS records system as part of their normal duties. NCS

⁶ The DNI Open Source Center ("OSC") at CIA was established on 1 November 2005. The DNI directed that the center be built on the capabilities and expertise of CIA's FBIS and report directly to the DCIA in implementing DNI strategy and guidance.

operational files are exempt from FOIA search and review pursuant to the CIA Information Act, 50 U.S.C. § 431.

20. The DS provides the CIA with mission-critical services, including the protection of CIA personnel, security matters generally, facilities, communications, logistics, training, medical services, and personnel resources. It maintains records on all current and former CIA employees, whether employed in a contract or staff capacity, as well as other individuals for whom security processing or evaluation has been required. Appropriately trained personnel regularly conduct FOIA searches of the DS records system as part of their normal duties.

21. The DIR Area includes the independent offices that report directly to the Director, and is distinct from the CIA's four main directorates (NCS, DI, DS&T, and DS). The DIR Area includes the Office of General Counsel, Office of Inspector General, Office of Congressional Affairs, Office of Public Affairs, Chief Financial Officer, Chief Information Officer, and other entities such as the Office of Diversity Plans and Programs. The DNI Open Source Center is also within the DIR Area. Appropriately trained personnel regularly conduct FOIA searches of the DIR records system as part of their normal duties.

B. Procedures for Processing FOIA Requests

22. The CIA has established the following procedures for processing FOIA requests. As previously noted, CIA's Information and Privacy Coordinator, who also serves as Chief, PIPD, is responsible for managing the FOIA, PA and E.O. 12958 Mandatory Declassification Review programs at the CIA. My office is the initial reception point in the CIA for all FOIA requests. Upon receipt, experienced

FOIA officers in PIPD review the request to ensure that it is perfected, that is, meets applicable legal and administrative requirements. Part of this review entails checking to see if the CIA has previously searched for and released records on the topic identified by the requester. If so, depending upon the volume, the requester is provided with copies of the responsive records or a listing of such records as well as with background on the search which generated the records. (See Exhibit B.) If a request is perfected and a search of CIA component records is necessary, PIPD officers determine which directorates⁷ of the CIA, reasonably may be expected to possess records responsive to the request and then forward copies of the requester's letter to those directorates with instructions to search for any responsive documents. The tasked directorates then conduct searches among all directorate components and indices and databases that reasonably may be expected to have any information responsive to the request. Directorate personnel responsible for conducting these searches are professionals who regularly and routinely conduct CIA record searches, whether for another component of the CIA, the Director of CIA, Department of Justice, Congress or a FOIA requester.

23. After a tasked component locates documents in response to a FOIA request, officers must review those documents to determine whether they, in fact, respond to the request. Because of the nature of a particular records system, or the search tools, indices, or terms employed, a search may locate many documents that are not responsive to the request. In fact, it is quite common for the number of non-responsive documents to exceed the number of responsive documents.

⁷In the discussion of processing procedures in this Declaration, "directorates" will include the DIR Area.

24. After officers identify and remove any non-responsive documents, they must then review the remaining responsive documents to determine if any FOIA exemptions apply, and whether they can reasonably segregate non-exempt information from exempt information. In the course of reviewing documents for exempt information and segregability, officers frequently identify information that must be coordinated with or referred to another CIA component or another agency because the other component or agency originated the information.⁸ This coordination and referral process itself can be quite time-consuming because other components and agencies have their own missions and FOIA priorities.
25. When all of the components and agencies⁹ have completed their respective reviews, PIPD professionals incorporate all of the recommendations regarding exemptions, segregation, and release, resolve conflicting recommendations, and ensure that the release or withholding determinations comply with the law and published CIA regulations. Under the direction and supervision of the CIA Information and Privacy Coordinator, a review is then conducted from a corporate perspective on behalf of the entire CIA. A final record copy of each CIA-originated document is produced and a response is provided to the requester. Documents originated by other government agencies are forwarded to those agencies for direct response to the requester.

C. CIA's Records Search in Response to Plaintiff's FOIA Request

⁸ See Exec. Order No. 12958, as amended, § 3.6(b).

⁹ "Agencies" in this context refers to one more other agencies having information or equities in CIA documents as opposed to referrals, which are documents located by CIA but originated by another agency. These are forwarded to the originating agency for review and direct response to the requester.

26. The CIA processed Plaintiff's request following the procedures set forth above.
27. As noted above (¶ 9), the CIA has previously searched for and released records relating to UFOs in response to FOIA requests and litigation. In addition, in 1993-94, at the direction of then Director of Central Intelligence (DCI) James Woolsey, the CIA conducted an Agency-wide search for and reviewed all CIA files relating to UFOs. This effort, conducted under the direction of the Executive Assistant to the Director of Central Intelligence ("DCI") resulted in a further release of 1,757 pages, bringing the CIA's release of documents relating to UFOs, that is, the "UFO package" to 2,779 pages. It should be noted that this search was Agency-wide and the intent of the review was to release as much information as possible, without compromising intelligence sources and methods. Thus, the subject of plaintiff's request—"a 1987 special meeting at FAA headquarters...to discuss and evaluate certain official evidence of the intrusive UFO encounter experienced on Nov. 17, 1986...by a Japanese flight crew" over Alaska—falls squarely within the parameters of this search. In reviewing this case, it was the second prong of Plaintiff's request which prompted the CIA to reopen the processing of his request, namely, the request for information "on all other similar cases of airborne UFO encounters reportedly occurring since Nov. 17, 1986." As was explained to Plaintiff in CIA's Sept. 30, 2008 letter, there is no CIA program to actively collect information on UFOs. However, the letter also acknowledged that occasionally we may receive reports of sightings of objects in the UFO category. Accordingly, a search was conducted by CIA for records concerning "similar cases of airborne UFO encounters" since November 17, 1986. And,

notwithstanding that records relating to the alleged 1987 special meeting at FAA headquarters concerning the November 1986 encounter, if any, should have been located during the special search for UFO related information conducted in 1993-94, a new search was conducted for records specifically relating to the meeting as described by the requester.

28. PIPD personnel experienced in the tasking of records searches tasked those CIA directorates reasonably likely to have responsive records, if any existed. PIPD tasked the Plaintiff's request to the DI, DS&T, DCIA Area and NCS. These components were tasked to search through June 15, 2009, the date of the letter informing requester that the case was being reopened.

29. As noted above, the DI analyzes, interprets, and forecasts foreign-intelligence related issues and world events of importance to the United States. The DI made all reasonable efforts to identify and retrieve any records responsive to Plaintiff's FOIA request. The DI searched its central data base, an all-source data base containing intelligence reports and finished intelligence received and originated by the CIA, for information on "other similar cases of airborne UFO encounters reportedly occurring since Nov. 17, 1986." The following search terms were used: "UFO", "UFOS", and "unidentified flying object or objects".

30. Three responsive documents, all originated by other agencies, were located.

Records in the main DI system are disseminated intelligence reports and are not indexed to retrieve information of the nature requested in item 1 of Plaintiff's request. Within the DI, the only component reasonably likely to possess records relating to the meeting described in requester's letter, would have been the Office

of Scientific and Weapons Research (“OSWR”)¹⁰, whose records have been archived. Such records are indexed only at the folder level. The DI searched using the following terms “UFO”, “U F O”, “U.F.O”, as well as “FAA”, “F A A”, and Federal Aviation Administration. In addition, the search officer looked for folder titles listing meeting, briefing, roster, or minutes for the same time period. No responsive records were located.

31. The DS&T also made all reasonable efforts to identify and retrieve records responsive to plaintiff’s request. Given the relevant time period, the DS&T searched archived records of the National Photographic Interpretation Center, Foreign Broadcast Information Service, Office of Imagery Analysis, Office of Technical Services, Office of the Director for S&T, Office of Development and Engineering, Office of Research and Development, and Office of Technical Collection. The DS&T employed the following search terms: “FAA”, “Federal Aviation Administration”, “UFO”, “unidentified flying object” and “Callahan”. No responsive records were located.

32. The DCIA Area also made all reasonable efforts to identify and retrieve any records responsive to plaintiff’s FOIA request. The DCIA Action Center (DAC), Office of Public Affairs, Open Source Center, and Center for the Study of Intelligence conducted records searches. All components searched for “unidentified flying objects”, “UFO”, “UFOs”, “FAA”, or “Federal Aviation Administration”. In addition, the following search terms were used by one or

¹⁰ OSWR was formed in 1980 when the Offices of Scientific Intelligence and Weapons Intelligence were merged. The name of the office was changed in 1995, and the office was subsequently merged with a number of others during successive reorganizations.

more components: "UFO encounter", "Japanese flight crew 1628", "aviation", "meeting at FAA 1987", "FAA meeting", "1987 FAA meeting", "UFO and Japan", "UFO and 1628", "UFO and CIA", "UFO and 747", "UFO and extraterrestrial", "Callahan". (The term "unidentified flying object" was also used in conjunction with other terms when "UFO" is listed in the preceding examples. In addition, as was noted above, a special search was conducted in 1993-94 regarding UFOs at the request of Director Woolsey. These records are part of the CIA UFO collection which was offered to the plaintiff in CIA's initial response. The search was overseen by the Executive Assistant to the DCI. The DAC searched all of the records retired as part of this effort ("every single page"), and CSI independently reviewed a subset as possibly containing responsive information being. All records were manually reviewed as part of this search. No responsive records were located. The DAC found no reference to a meeting or the FAA in 1987 ("or indeed, any other year") or any documentation regarding UFO encounters, extra-terrestrials, or unexplained flying phenomena from 1986 onward. In addition, the individual who oversaw the 1993-94 search and review effort as the Executive Assistant to the DCI searched his email concerning this project for "FAA" and located no responsive documents.

33. As previously noted the NCS is responsible for the clandestine collection of foreign intelligence information. The NCS records system contains information on persons and entities that are of foreign intelligence or counter-intelligence interest to the CIA and other United States Government agencies. After

reviewing plaintiff's FOIA request, NCS responded that its records system was not set up to search on general subjects or topics such as UFOs.^{11,12}

34. In sum, the CIA tasked those components reasonably likely to possess information responsive to Plaintiff's request (if any) to conduct records searches. The searches were conducted by information management professionals who are familiar with the records systems of their respective components and who routinely and regularly conduct searches of these records as part of their professional responsibilities. These individuals were familiar with Plaintiff's request and all such searches were reasonably calculated to locate responsive records, if any. As indicated above, no documents were located in response to item (a) ("1987 special meeting at FAA") of Plaintiff's request and three records originated by other government agencies were located in response to item (b) ("all other similar cases of airborne UFO encounters").

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

Executed this 26th day of October, 2009.

Delores M. Nelson
Information & Privacy Coordinator
Central Intelligence Agency

¹¹ Intelligence reports disseminated by NCS (formerly the Directorate of Operations) are included in the DI records system where they may be searched by topic (and were searched as part of the DI records search described above.)

¹² The Directorate of Support to conduct searches in this case. Given its functions as CIA's administrative and support arm, PIPD officers reasonably determined that the DS was not likely to have records responsive to plaintiff's request.