

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMERICAN CIVIL LIBERTIES UNION,)	
<u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	04 Civ. 4151 (AKH)
)	
DEPARTMENT OF DEFENSE, <u>et al.</u> ,)	
)	
Defendants.)	
)	

**DECLARATION OF WENDY M. HILTON
INFORMATION REVIEW OFFICER
FOR DETAINEE RELATED MATTERS
CENTRAL INTELLIGENCE AGENCY**

I. INTRODUCTION

I, WENDY M. HILTON, hereby declare and say:

1. I am the Information Review Officer for Detainee-Related Matters (DRM/IRO) for the Central Intelligence Agency (CIA). From March 2007 to November 2009, I served as the Associate Information Review Officer in the National Clandestine Service (NCS) responsible for detainee-related matters. As the DRM/IRO, I am responsible for protecting from unauthorized disclosure detainee-related information that originates with the CIA or otherwise implicates CIA interests. As part of my official duties, I ensure that any determinations as to the release

or withholding of such information are proper and do not endanger CIA personnel or facilities, and do not jeopardize the interests of the CIA.

2. I hereby incorporate my previous declaration dated 13 May 2009 (Unclassified Hilton Declaration), which sets forth the statutory duties of the CIA and the Director, Central Intelligence Agency (DCIA), and the functions of the NCS. Additionally, I also hereby incorporate Director Leon Panetta's 8 June 2009 classified and unclassified declarations.

3. Through the exercise of my official duties, I am familiar with this civil action. I make the following statements based upon my personal knowledge and information made available to me in my official capacity.

4. I understand that in this case the Court ordered the CIA to search for, and process for potential release, documents from two time periods (1 April 2002 to 30 June 2003; and 1 June 2005 to 31 January 2006) that described the persons and reasons behind the destruction of 92 interrogation videotapes. The CIA subsequently searched pertinent electronic databases and located 165 responsive documents (not counting duplicates) that were then reviewed

for potential release.¹ Of the 165 documents at issue, the Agency determined that 13 documents could be released in part. Prior to releasing the 13 documents, however, the Agency was informed by the Department of Justice that Special Prosecutor John Durham was asserting Freedom of Information Act (FOIA) Exemption (b)(7)(A) over the proposed-for-release portions of 10 of the 13 documents that the CIA was prepared to release in part.² The other three documents the CIA proposed for partial release have Congressional equities that require consultation with Congress before a final release determination can be made.³ Therefore, all of the documents are currently withheld in full.

5. The purpose of this declaration and accompanying Vaughn index (attached and hereby incorporated) is to describe, to the greatest extent possible on the public record, the information withheld by the CIA from the

¹The CIA also searched the CIA's Office of the Inspector General (OIG) and located 55 responsive documents that were the subject of my November 20, 2009 Declaration.

²These ten documents are identified on the Vaughn index as documents 60, 132, 133, 148, 149, 153, 154, 160, 161, and 162. Document 160 also contains Presidential communications.

³These three documents are identified on the Vaughn index as documents 156, 157, and 164. Document 156 also contains Presidential communications.

documents at issue, and the FOIA exemptions upon which the CIA relied to withhold that information. Part II of this declaration describes the CIA documents and information at issue; Part III discusses the applicable FOIA exemptions.⁴

II. CIA DOCUMENTS AND INFORMATION AT ISSUE

6. The CIA documents at issue include primarily internal CIA communications and memoranda prepared by CIA officers and attorneys. The information contained in those documents includes information pertaining to the persons and reasons behind the destruction of 92 videotapes, and information pertaining to the capture, rendition, interrogation, and confinement of terrorists.

7. The information withheld by the CIA generally falls into the following categories:

1. Information relating to intelligence sources, methods, or collections; operational intelligence activities; or the foreign relations and foreign activities of the United States and that, as described below, is protected from disclosure under FOIA Exemption (b)(1);

⁴ If the Court desires, the CIA is prepared to supplement this unclassified declaration with a classified declaration containing information that the CIA cannot file on the public record.

2. Information that relates to CIA sources, methods, functions, or the names of CIA employees or contractors and that, as described below, is protected from disclosure under FOIA Exemption (b) (3);
3. Information relating to predecisional inter- and intra-agency discussions and deliberations, attorney-client communications, attorney work-product created in anticipation of litigation, and Presidential Communications that, as described below, is protected from disclosure under FOIA Exemption (b) (5);
4. Information that relates to personnel and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and that, as described below, is protected from disclosure under FOIA Exemption (b) (6).

III. APPLICABLE FOIA EXEMPTIONS

A. Exemption (b) (1)

8. FOIA Exemption (b) (1) provides that FOIA does not require the production of records 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.

5 U.S.C. § 552(b)(1).

9. The authority to classify information is derived from a succession of Executive orders, the most recent of which is Executive Order 12958.⁵ I have reviewed the documents responsive to Plaintiffs' FOIA request under the criteria established by Executive Order 12958. I have determined that the information withheld from many of these documents on the basis of Exemption (b)(1) is in fact properly classified pursuant to the Order.

1. Procedural Requirements

10. Section 6.1(h) of the Executive Order 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 6.1(y) of the Order defines "national security" as the "national defense or foreign relations of the United States."

⁵On 29 December, 2009 President Barack Obama issued Executive Order 13526, which revokes Executive Order 12958. However, the relevant parts of Executive Order 13526 does not go into effect until 180 after it was issued.

11. Section 1.1(a) of the Executive Order provides that information may be originally classified under the terms of this order only if all of the following conditions are met:

(1) an original classification authority is classifying the information;

(2) the information is owned by, produced by or for, or is under the control of the United States Government;

(3) the information falls within one or more of the categories of information listed in section 1.4 of this order; and

(4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage.

Exec. Order 12958, § 1.1(a).

12. *Original classification authority* - Section 1.3(a) of the Executive Order provides that the authority to classify information originally may be exercised only by the President and, in the performance of executive duties, the Vice President; agency heads and officials designated by the President in the *Federal Register*; and United States Government officials delegated this authority pursuant to section 1.3(c) of the Order. Section 1.3(b) of the Executive Order provides that original TOP SECRET

classification authority includes the authority to classify information originally as SECRET and CONFIDENTIAL. Section 1.3(c)(2) provides that TOP SECRET original classification authority may be delegated only by the President; in the performance of executive duties, the Vice President; or an agency head or official designated pursuant to section 1.3(a)(2) of the Executive Order.

13. In accordance with section 1.3(a)(2), the President designated the Director of the CIA as an official who may classify information originally as TOP SECRET.⁶ Under the authority of section 1.3(c)(2), the Director of the CIA has delegated original TOP SECRET classification authority to me. With respect to the information described below in this declaration relating to CIA intelligence activities, sources, and methods, I have determined that this information is properly classified TOP SECRET, SECRET, and/or CONFIDENTIAL by an original classification authority.

⁶ Order of President, Designation under Executive Order 12958, 70 Fed. Reg. 21,609 (Apr. 21, 2005), reprinted in 50 U.S.C.A. § 435 note at 205 (West Supp. 2008). This order succeeded the prior Order of President, Officials Designated to Classify National Security Information, 60 Fed. Reg. 53,845 (Oct. 13, 1995), reprinted in 50 U.S.C.A. § 435 note at 486 (West 2003), in which the President similarly designated the Director of the CIA as an official who may classify information originally as TOP SECRET.

14. *U.S. Government information* - Information may be originally classified only if the information is owned by, produced by or for, or is under the control of the USG. With respect to the information relating to CIA intelligence activities, sources, and methods, and foreign relations and foreign activities, as described herein and for which FOIA Exemption (b)(1) is asserted in this case, that information is owned by the USG, was produced by the USG, and is under the control of the USG.

15. *Categories in Section 1.4 of the Executive Order* - With respect to the information relating to CIA intelligence activities, sources, and methods, and foreign relations and foreign activities, described herein and for which FOIA Exemption (b)(1) is asserted in this case, that information falls within the following classification categories in the Executive Order: "information . . . concern[ing] . . . intelligence activities . . . [and] intelligence sources or methods" [§ 1.4(c)]; and "foreign relations or foreign activities of the United States" [§ 1.4(d)]. I describe this information and its relation to the national security below.

16. *Damage to the national security* - Section 1.2(a) of the Executive Order provides that information shall be classified at one of three levels if the unauthorized

disclosure of the information reasonably could be expected to cause damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the damage. Information shall be classified TOP SECRET if its unauthorized disclosure reasonably could be expected to result in *exceptionally grave damage* to the national security; SECRET if its unauthorized disclosure reasonably could be expected to result in *serious damage* to the national security; and CONFIDENTIAL if its unauthorized disclosure reasonably could be expected to result in *damage* to the national security.

17. With respect to the information relating to CIA intelligence activities, sources, and methods, and foreign relations and foreign activities, described herein and for which FOIA Exemption (b)(1) is asserted, I have determined that this information is classified SECRET or TOP SECRET because it constitutes information the unauthorized disclosure of which reasonably could be expected to result in serious or exceptionally grave damage to the national security, which includes defense against transnational terrorism. The damage to national security that reasonably could be expected to result from the unauthorized

disclosure of this classified information is described below.

18. *Proper purpose* - With respect to the information relating to CIA intelligence activities, sources, and methods, and foreign relations and foreign activities, described herein and for which FOIA Exemption (b)(1) is asserted, I have determined that this information has not been classified in order to conceal violations of law, inefficiency, or administrative error; prevent embarrassment to a person, organization or agency; restrain competition; or prevent or delay the release of information that does not require protection in the interests of national security.

19. *Marking* - With respect to the information relating to CIA intelligence activities, sources, and methods, and foreign relations and foreign activities, described herein and for which FOIA Exemption (b)(1) is asserted in this case, I have reviewed the documents and have determined that they are properly marked in accordance with section 1.6 of the Executive Order. Each document bears on its face the CONFIDENTIAL, SECRET or TOP SECRET

classification levels⁷ defined in section 1.2 of the order; the identity, by name or personal identifier and position, of the original classification authority or the name or personal identifier of the person derivatively classifying the document in accord with section 2.1 of the order; the agency and office of origin, if not otherwise evident; declassification instructions; and a concise reason for classification that, at a minimum, cites the applicable classification categories of section 1.4.⁸

20. *Proper classification* - With respect to the information relating to CIA intelligence activities, sources, and methods, and foreign relations and foreign activities, described herein, and for which FOIA Exemption (b)(1) is asserted, I have determined that this information has been classified in accordance with the substantive and procedural requirements of Executive Order 12958 and that this information is currently and properly classified.

⁷Some of the documents were initially improperly labeled unclassified. The documents have since been properly marked as classified.

⁸ Some of these documents also contain markings for "Special Access Programs," also known as "Sensitive Compartmented Information" or "SCI." Section 4.3 of Executive Order 12958 establishes the legal requirements for establishing SCI programs. Some of these markings are themselves classified and were redacted from the documents at issue.

2. Substantive Requirements

21. In processing the documents at issue, I have reviewed the records identified as exempt under Exemption (b)(1) in this declaration and have determined that they contain information that is currently and properly classified. I will describe, to the greatest extent possible on the public record, the damage to the national security that reasonably could be expected to result from the unauthorized disclosure of this information.

22. In general, the documents at issue contain information that implicates intelligence activities, sources, methods, and information relating to the foreign relations and activities of the United States. This information is classified, as its unauthorized disclosure could reasonably be expected to result in serious or exceptionally grave damage to the national security. This information is also protected from disclosure under the National Security Act of 1947 and the Central Intelligence Agency Act of 1949, as discussed below. The classified and otherwise protected information at issue primarily includes information concerning the capture, detention, interrogation, and confinement of known terrorists. The information impacting foreign relations contained within the documents includes the locations of CIA intelligence

activities overseas and the assistance provided by certain foreign governments in furtherance of those activities.

a. Intelligence Activities and Methods

23. I will first provide a general description of intelligence activities and their classified nature, and next describe the specific information relating to intelligence activities included in the documents at issue that the CIA redacted or withheld in this case.

Intelligence activities refer to the actual implementation of intelligence sources and methods in the operational context. Intelligence activities are highly sensitive because their disclosure often would reveal details regarding specific intelligence collection activities. The CIA is charged with both foreign intelligence and counter-intelligence collection and analysis responsibilities.

Although it is obviously widely acknowledged that the CIA is responsible for performing activities in support of this mission for the United States, the CIA cannot confirm or deny the existence of any specific intelligence collection or disclose the target of such intelligence gathering activities.

24. To disclose the existence (or non-existence) of a particular intelligence collection activity would reveal U.S. intelligence needs, priorities, and capabilities to a

foreign intelligence service or hostile organization seeking to take advantage of any national security weakness. The damage that would be caused by such an admission is clear. Foreign government services and hostile organizations would be advised that their activities and information had been targeted by the CIA; future intelligence collection activities would be made more difficult by such a revelation; and, as a result, the conduct of such operations would become even more dangerous.

25. Some of the redacted information at issue in this case concerns two specific intelligence activities: (1) the capture, detention, and confinement of terrorists; and (2) the interrogation of terrorists.

*(1) Capture, Detention, and Conditions
of Confinement*

26. Some of the redacted information at issue in this case relates to highly-classified details pertaining to the capture, detention, and confinement of terrorists. As explained in the incorporated declarations, the CIA was previously authorized to set up terrorist detention facilities outside the United States. Although this practice has been discontinued, many of the details remain classified, as Director Panetta explained to the Court in

his 8 June 2009 unclassified and classified declarations. The still-classified details include information concerning: Enhanced Interrogation Techniques (EITs) in application; assistance of foreign liaison services in any aspect of the program; locations; the names of detainees; confinement and capture information; information that could identify USG employees involved in counterterrorist operations; and other operational details. In fact, many of these details constitute TOP SECRET, Sensitive Compartmented Information (SCI).

27. I have already described the levels of classification outlined in Executive Order 12958. In addition to those levels of classification, Executive Order 12958, section 4.3, provides that specified officials may create special access programs upon a finding that the vulnerability of, or threat to, specific information is exceptional, and the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure. The DNI is authorized to establish special access programs relating to intelligence activities, sources, and methods. These special access programs relating to intelligence are called Sensitive Compartmented Information (SCI) programs.

28. As is explained in the incorporated declarations, the still-classified information concerning the CIA's capture, detention, and confinement of terrorists has been placed in a TOP SECRET//SCI program to enhance protection from unauthorized disclosure. The unauthorized disclosure of the intelligence sources and methods at issue reasonably could be expected to cause exceptionally grave damage to national security.

(2) *Interrogation Methods and
Intelligence Collection*

29. It is likely that the USG will continue to be involved in debriefing terrorists consistent with the law and policies of the United States. An effective program to obtain intelligence through questioning terrorists requires the cooperation of foreign governments and the use of effective elicitation techniques.

30. The USG is aware that al-Qa'ida and other terrorists train in counter-interrogation methods. Although EITs have been discontinued, disclosure of the questioning procedures and methods of elicitation used by the USG would allow al-Qa'ida and other terrorists to more effectively train to resist such techniques, which would result in degradation in the effectiveness of the techniques in the future. If detainees in USG custody are

more fully prepared to resist questioning, it could prevent the USG from obtaining vital intelligence that could disrupt future attacks targeting U.S. persons and property.

31. In addition to interrogation methods, the documents at issue contain other intelligence methods that the CIA uses in numerous ongoing contexts. These methods touch on how the CIA obtains, analyzes, and secures information from a broad spectrum of sources. If a hostile power, including al-Qai'ida, were to have access to this information it would be able to correct its vulnerabilities that the CIA is currently able to exploit, and, in turn, exploit vulnerabilities of the CIA. This could reasonably be expected to result in exceptionally grave damage to the national security.

b. Foreign Relations and Foreign Activities of the United States

32. Among the most critical sources and methods in the collection of foreign intelligence are the relationships that the United States maintains with the intelligence and security services of foreign countries. Through these intelligence liaison relationships, the CIA can collect intelligence and provide to national security and foreign policy officials information that is critical

to informed decision making -- information that the CIA cannot obtain through other sources and methods.

33. As such, the CIA has determined that unauthorized disclosure of information which reasonably could be expected to harm foreign relations or foreign activities of the United States, is currently and properly classified as SECRET and/or TOP SECRET pursuant to the criteria of Executive Order 12958, as its disclosure could reasonably be expected to cause serious and exceptionally grave damage to the national security of the United States, and is thus exempt from disclosure pursuant to FOIA Exemption (b)(1).

34. Foreign governments have provided critical assistance to CIA counterterrorism operations, under the condition that their assistance is kept secret. As Director Panetta explained in his 8 June 2009 declarations, disclosing information concerning the specific assistance of foreign countries to the CIA's counterterrorism operations would damage the CIA's relations with these foreign governments and could cause them to cease cooperating with the CIA on such matters. Such information has therefore been withheld from the documents at issue. If the United States demonstrates that it is unwilling or unable to stand by its secrecy commitments to foreign

governments, they will be less willing to cooperate with the United States on counterterrorism activities.

35. Some of the information withheld from these documents is the same kind of operational information described in the Panetta Declarations. For this reason, despite the recent releases, the withheld information cannot be disclosed and must remain exempt from disclosure under FOIA Exemption (b)(1).

B. Exemption (b)(3)

36. FOIA Exemption (b)(3) provides that the FOIA does not apply to matters that are:

specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld . . .

5 U.S.C. § 552(b)(3). The CIA has reviewed the documents responsive to the Court's order and determined that there are two relevant withholding statutes: the National Security Act of 1947; and the Central Intelligence Agency Act of 1949.

37. *National Security Act of 1947* - Section 102A(i)(1) of the National Security Act of 1947, as

amended, 50 U.S.C.A. § 403-1(i)(1) (West Supp. 2008), provides that the DNI shall protect from unauthorized disclosure intelligence sources and methods. Where documents at issue contain information that, if disclosed, would reveal intelligence sources and methods, that information is protected from disclosure by both Exemption b(1) and Exemption b(3).

38. *Central Intelligence Agency Act of 1949* - Section 6 of the Central Intelligence Agency Act of 1949, as amended, 50 U.S.C.A. § 403g (West Supp. 2008), provides that in the interests of the security of the foreign intelligence activities of the United States and in order to further implement section 403-1(i) of Title 50, which provides that the DNI shall be responsible for the protection of intelligence sources and methods from unauthorized disclosure, the CIA shall be exempted from the provisions of any law which requires the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the CIA, including, as discussed in the 13 May 2009 Hilton declaration, paid and unpaid contractors and consultants of the CIA. Among the functions of the CIA are the collection, analysis, and dissemination of foreign intelligence. The collection function includes the

clandestine intelligence sources, methods, and activities by which the CIA collects foreign intelligence from human sources. In this case, the information withheld from the documents at issue includes details of critical functions of the CIA and information that could reveal the identities of CIA personnel engaged in counterterrorist operations. As described above, each classified category of information contained in the documents at issue relates primarily to the CIA's ability to collect counterterrorism intelligence and perform counterterrorism operations--functions that reside at the core of the CIA's mission.

39. In contrast to Executive Order 12958, the National Security Act's statutory requirement to protect intelligence sources and methods and the CIA Act's exemptions from disclosure of certain information do not require the CIA to identify or describe the damage to national security that reasonably could be expected to result from their unauthorized disclosure. In any event, the information relating to intelligence sources and methods in these documents that is covered by the National Security Act and the CIA Act is the same as the information relating to intelligence sources and methods that is covered by the Executive Order for classified information. Therefore, the damage to national security that reasonably

could be expected to result from the unauthorized disclosure of such information relating to intelligence sources and methods is co-extensive with the damage that reasonably could be expected to result from the unauthorized disclosure of classified information.

C. Exemption (b) (5)

40. FOIA Exemption (b) (5) provides that FOIA does not apply to inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the agency. The documents identified as exempt under Exemption (b) (5) on the attached Vaughn index are inter-agency and intra-agency records that contain information that is protected from disclosure by four privileges, described below.

41. *Attorney work-product* - The attorney work product privilege protects information, mental impressions, legal analysis, conclusions, and opinions prepared by attorneys or other representatives of a party in anticipation of criminal, civil, or administrative proceedings. Those documents, for which the work product privilege has been asserted, as specified in the attached Vaughn index, contain information prepared by CIA attorneys in anticipation of criminal, civil, and administrative

proceedings, as described below and in the accompanying Vaughn index.

42. For example, several documents withheld under FOIA Exemption (b)(5) contain requests for legal advice from CIA officers to CIA attorneys. The purpose in requesting legal advice was the prospect of litigation against the CIA and CIA personnel who were involved in counterterrorism operations, and the internal debate on whether to destroy the tapes. This advice was not solicited in the ordinary course of business. Rather, the requests for advice were solicited in anticipation of future litigation.

43. Similarly certain documents described in the Vaughn index reflect CIA attorneys' analysis, thoughts, opinions, mental impressions, and/or advice regarding the legal implications of certain operational matters and the destruction of the tapes. Those records described in the attached Vaughn index for which the CIA has asserted the work product privilege were prepared in contemplation of specific litigation and reflect attorneys' tactical and strategic thinking. Those records were created with the expectation that they would be held in confidence, and they have been held in confidence. Accordingly, they are

properly withheld pursuant to the attorney work product privilege.

44. *Attorney-client* - The attorney-client privilege protects confidential communications between a client and his attorney relating to a matter for which the client has sought legal advice. The records described in the attached Vaughn index for which the CIA has asserted the attorney-client privilege contain confidential communications between CIA staff and the CIA's Office of General Counsel acting in their capacity as legal advisors to the CIA. These communications relate to matters for which the attorneys provided legal advice to the CIA. Some of this legal advice was based upon, and reflects, confidential facts provided by the CIA officers to CIA attorneys. These documents were prepared by and at the direction of the CIA attorneys, with the joint expectation of the CIA attorneys and CIA officers that they would be held in confidence. Moreover, these documents have been held in confidence.

45. *Deliberative process* - Exemption (b)(5) has been construed to incorporate the civil discovery concept that information or documents of pre-decisional, deliberative process are exempt from disclosure. The deliberative process privilege protects the internal deliberations of the government by exempting from release those

recommendations, analyses and discussions - both factual and legal - prepared to inform or in anticipation of decision-making. The integrity of the government's deliberative process, not just the documents themselves, is protected by this privilege.

46. Some of the records described in the attached Vaughn index are protected by the deliberative process privilege because they contain information that reflects the pre-decisional deliberations of CIA and other Executive Branch officials, including Presidential advisors. For example, as described in the attached index, these records reflect pre-decisional discussions between CIA officials regarding possible approaches to take with respect to outstanding policy issues, candid internal discussions between CIA staff regarding policy issues, non-final drafts, working papers, briefing papers, recommendations, legal advice, and recommendations for actions to policymakers from staff members. These records were all solicited, received or generated as part of the process by which policy is formulated. Disclosure of this information would therefore reveal the pre-decisional deliberations of Executive Branch officials.

47. The deliberative process privilege also protects the factual information contained in these documents to the

extent that the particular facts contained in these drafts, working papers, briefing papers, recommendations, requests for advice, and other similar documents were identified, extracted, and highlighted out of other potentially relevant facts and background materials by the authors, in the exercise of their judgment. Accordingly, the disclosure of the facts that were selected for inclusion in drafts, briefing materials, recommendations, advice or other such documents would themselves tend to reveal the author's and the agency's deliberative process.

48. Because the officials involved in these pre-decisional deliberations expected that their candid discussions and recommendations regarding sensitive national security issues would remain confidential, release of these records would discourage open and frank discussions among Executive Branch officials in the future, thereby threatening the confidence needed to ensure the candor of future CIA deliberations. Such information is therefore properly exempt from disclosure under Exemption (b) (5).

49. *Presidential Communications* - Exemption b(5) also protects from disclosure information covered by the presidential communications privilege. The presidential communications privilege protects confidential

communications that relate to potential presidential decision-making and that involve the President, his senior advisors, or staff working for senior presidential advisors. The privilege protects communications in connection with the performance of the President's responsibilities and made in the process of shaping policies and making decisions.

50. In addition to communications directly involving the President, the privilege protects communications involving presidential advisors, including communications these advisors solicited and received from others and those they authored themselves. This privilege applies to documents in their entirety, and covers final and post-decisional materials as well as pre-decisional materials.

D. Exemption (b) (6)

51. FOIA Exemption (b) (6) provides that the FOIA does not apply to personnel and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Information from the documents at issue that is personally identifying information has been withheld, as the disclosure of that information would

constitute a clearly unwarranted invasion of personal privacy. Disclosing information that could identify CIA employees, contractors, and other personnel engaged in clandestine counterterrorism operations could place those individuals, and their families and friends, at grave risk from extremists seeking retribution. There is no legitimate countervailing public benefit that could come close to outweighing this paramount concern to protect U.S. Government employees and their associates.

E. Segregability

52. With respect to the 165 documents at issue, the CIA conducted a line-by-line review to identify and release all reasonably segregable, non-exempt portions of the documents. The CIA determined that 13 of the 165 documents at issue could be released in part, but the releasable portions of 10 of those 13 documents were subsequently withheld from disclosure by Special Prosecutor John Durham under FOIA Exemption (b)(7)(A). Additionally, Congress has equities in the three remaining documents the CIA was prepared to release, and the CIA is coordinating with Congress before a final release determination can be made.

53. For the reasons described above, the CIA has withheld information from the 165 documents at issue, in

whole or in part, on the basis of FOIA Exemptions (b) (1),
(b) (3), (b) (5), and b(6).

* * * *

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

Executed this 8th day of January, 2010.



Wendy M. Hilton
Information Review Officer for
Detainee-Related Matters
Central Intelligence Agency